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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 05-44481PM

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In the Matter of:

DELPHI CORPORATION,

Debtor.

- - - - -x

United States Bankruptcy Court
One Bowling Green
New York, New York

January 11, 2007
2:39 PM

B E F O R E:

HON. ROBERT D. DRAIN
U.S. BANKRUPTCY JUDGE

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HEARING to Consider Authorization or Approval of the Equity
Purchasing Commitment Agreement and the Plan Framework Support
Agreement

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A P P E A R A N C E S :

SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP

Attorneys for Debtor

333 West Wacker Drive

Chicago, IL 60606

BY: JOHN WM. BUTLER, JR., ESQ.

ALBERT L. HOGAN, III, ESQ.

SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP

Attorneys for Debtor

Four Times Square

New York, NY 10036

BY: KAYALYN A. MARAFIOTI, ESQ..

THOMAS J. MATZ, ESQ.

FRIED, FRANK, HARRIS, SHRIVER & JACOBSON, LLP

Attorneys for the Official Committee of

Equity Holders

One New York Plaza

New York, NY 10004

BY: BONNIE STEINGART, ESQ.

LATHAM & WATKINS

Attorneys for the Official Committee of

Unsecured Creditors

855 Third Avenue

New York, New York 10022

BY: ROBERT ROSENBERG, ESQ.

KENNEDY, JENNIK & MURRAY, P.C.

Attorneys for IUE

113 University Place

New York, New York 10003

BY: THOMAS KENNEDY, ESQ.

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HAYNES & BOONE, LLP

Attorneys for Highland Capital

153 East 53rd Street

Suite 4900

New York, NY 10022

BY: BRIAN D. HAIL, ESQ.

LENARD M. PARKINS, ESQ.

MEYER, SUOZZI, ENGLISH & KLEIN, P.C.

Attorneys for Steelworkers Union

1350 Broadway

Suite 501

New York, New York 10018

BY: LOWELL PETERSON, ESQ.

PREVIANAT, GOLDBERG, UELMEN, GRATZ, MILLER & BRUEGGEMAN, S.C.

Attorneys for IBEW and IAM

1555 North River Center Drive

Suite 202

Milwaukee, Wisconsin 53212

BY: MARIANNE GOLDSTEIN ROBBINS, ESQ.

COHEN, WEISS AND SIMON, LLP

Attorneys for UAW

330 West 42nd Street

New York, New York 10036

BY: BRUCE H. SIMON, ESQ.

BRUCE LEVINE, ESQ.

GORLICK, KRAVITZ & LISTHAUS, P.C.

Attorneys for Operating Engineers

Locals 18-S, 101-S, 832-S

17 State Street, 4th Floor

New York, New York 10004

BY: BARBARA S. MEHLSACK, ESQ.

OFFICE OF THE UNITED STATES TRUSTEE

33 Whitehall Street

21st Floor

New York, New York 10004

BY: ALICIA M. LEONHARD, ESQ.

1 P R O C E E D I N G S

2 THE COURT: Please be seated. All right. We're back
3 on the record in Delphi Corporation.

4 MR. BUTLER: Your Honor, good afternoon. Jack Butler
5 on behalf of the debtors. The next witness we would offer
6 through the declaration. It's been admitted into evidence at
7 Exhibit number 63. That's the declaration of David L. Resnick,
8 and it's been admitted subject to cross-examination.

9 THE COURT: Okay. All right.

10 (Witness duly sworn)

11 THE COURT: And again, just for the record, would you
12 spell your name?

13 THE WITNESS: David, the last name's Resnick, R-E-S-
14 N-I-C-K.

15 CROSS-EXAMINATION BY

16 MS. STEINGART:

17 Q. Good afternoon, Mr. Resnick. You've been acting on behalf
18 of the debtors as a representative in connection with the
19 negotiation of the agreements before the Court, correct?

20 A. As their investment banker in the negotiations, yes.

21 Q. And you had been involved in the negotiations from day to
22 day in connection with the framework agreement?

23 A. For the most part.

24 Q. And -- now, the reason companies pay a commitment fee is
25 because, as you testified during your deposition, a lender or

1 investor is committing significant amounts of capital for a
2 period of time at risk before they actually close the
3 transaction. Wouldn't you say that?

4 A. Yes.

5 Q. But an investor isn't really at risk if he can just decide
6 to walk away for any reason or no reason. Isn't that right?

7 A. It depends what the conditions are to the agreement under
8 which an investor decides to invest.

9 Q. Right. But I'm asking you about the risk, not about the
10 agreement. An investor who can walk away for any reason or no
11 reason is not exposing themselves to risk, correct?

12 A. Theoretically, an investor that can walk away for any
13 reason has no risk, correct.

14 Q. And it's not only theoretical, that's true in the real
15 world, too. If you can walk away you have no risk.

16 A. If there was such an agreement where someone was paid a
17 commitment fee and had absolutely no risk, that would be
18 correct.

19 Q. Someone who has no risk -- well, okay. Well, let's see if
20 somebody entered into such an agreement. Shall we?

21 A. I -- I couldn't hear you. I'm sorry.

22 Q. I said, let's see if somebody did enter into such an
23 agreement. Now, as you understand the planned framework
24 agreement before they were amended yesterday, isn't it fair to
25 say that because of the ability to walk away for any reason or

1 no reason after April 1st, the plan investors had no capital at
2 risk?

3 A. There were part of the amendment provisions in the
4 agreements that could be read to give the plan investors the
5 ability to walk away, yes.

6 Q. More than could be read. That's what they said.

7 A. That's what they said.

8 Q. Okay. And it wasn't inadvertent that that happened, was
9 it?

10 A. I was not involved in the negotiations of those
11 provisions, so I could not say.

12 Q. Well, let's look at after.

13 THE COURT: I don't think Mr. Resnick has a copy of
14 either of these documents.

15 MS. STEINGART: Okay. I thought --

16 THE WITNESS: I can't see it from here.

17 THE COURT: Okay.

18 MS. STEINGART: So you have the before and the after?

19 THE WITNESS: I have the after.

20 Q. Okay. Well, we're up to after. The after is after the
21 amendments. So after the amendments we still have a walk-away
22 right for any reason or another, correct?

23 A. Up to April 1st, I believe.

24 Q. After April 1st. And that right continues until the Court
25 approves a disclosure statement, right?

1 A. Right.

2 Q. Okay. Now, if it was inadvertent in the first -- at the
3 first time, why is it still here?

4 A. Because you have to look at the totality of the framework
5 agreement rather than focus in on a particular provision, and I
6 think this was a very complex agreement, financial legal
7 conditions and other issues, and upon negotiating a host of
8 issues, including these, we ended up with the agreement that
9 we're presenting to the Court today.

10 Q. I understand that you ended up with this agreement and I
11 understand the totality mantra but it's here because people
12 want it to be here. It's not here because people don't know
13 it's here, right?

14 MR. BUTLER: Objection, foundation. No one's
15 testified they wanted these provisions.

16 THE COURT: Well, if your point is that it's not
17 inadvertent --

18 MS. STEINGART: Yes.

19 THE COURT: -- I think you can move on.

20 MS. STEINGART: Okay. Let's move on then.

21 THE COURT: It's been amended and it's clearly --

22 MS. STEINGART: Right. Exactly. Thank you, Your
23 Honor.

24 THE COURT: People have focused on it.

25 MS. STEINGART: Thank you, Your Honor.

1 Q. At the time that discussions were proceeding on these
2 agreements, you got in touch with David Tepper, didn't you?

3 A. I was in touch with Mr. Tepper on a regular basis.

4 Q. Okay. Why don't we look at the joint trial Exhibit number
5 92?

6 A. I take it that's in front of me? Thank you. Okay.

7 Q. Okay. Now, do you recognize this to be an e-mail that you
8 sent to David Tepper on December 4th?

9 A. Yes, I do.

10 Q. And did you write to Mr. Tepper that for the Court to
11 approve these there would have to be some deal among the
12 parties?

13 A. I wrote to Mr. Tepper what's in this e-mail.

14 Q. Okay. And did you --

15 A. And those words that you read are among the words that are
16 in this e-mail, yes.

17 Q. Okay. And even at that time, there was certain hesitancy
18 by GM to sign an agreement, wasn't there?

19 A. I don't know if I'd use the word "hesitancy." There were
20 discussions with GM around the type of plan support agreement
21 GM would sign, whether it would sign an agreement and we were
22 discussing the issues surrounding, in general, a plan support
23 agreement.

24 MS. STEINGART: Sorry. The print here is so small.
25 I'm having difficulty seeing it, Your Honor. Oh, okay, sorry.

1 It's highly confidential. I'll stop reading from it.

2 Q. As a result of that reluctance, the plan support agreement
3 contained fairly broad termination provisions, correct?

4 A. It was a more general agreement than the debtor wished.

5 Q. I'm sorry. I didn't hear your last word.

6 A. I said it was a more general agreement than the debtor
7 wished. It was broader in form rather than specific in detail.

8 Q. Well, how many agreements broader than the debtor
9 wished -- how many agreements are you involved in where there's
10 a walk-away for any reason or no reason at all?

11 A. Again, I think you have to look at the context in which
12 the agreement was negotiated and the specific strategic purpose
13 that at least my client saw this agreement serving.

14 Q. All right. And at this point, one of the functions of the
15 agreements before the Court is to get fees for the plan
16 investors, right?

17 A. Well, part of this motion is to approve fees along with
18 the finance agreement.

19 Q. And there are a number of different kinds of fees that
20 we'll be looking at, correct?

21 A. Correct.

22 Q. Okay. Now, did you communicate with the board about the
23 changes being made in the agreement that were filed yesterday?

24 A. I did not, no.

25 Q. Okay. Were you involved in any conversations with the

1 board concerning those agreements?

2 A. I participated in the board meeting when the changes in
3 the agreements were discussed but I did not handle that portion
4 of the meeting.

5 Q. And did you have meetings and conversations with
6 management who negotiated those changes at or about the changes
7 that were negotiated?

8 A. The most recent changes I was -- I was not involved in the
9 negotiation.

10 Q. Were you involved in any conversations when the agreements
11 were changed about the fact that the agreement still provided
12 an opportunity for the plan investors to have a breakup fee
13 while they maintained a right to walk away for any reason or no
14 reason?

15 A. I was aware of the terms of the reimbursement for fees,
16 expenses, including the breakup fee, at the time the board
17 reviewed the agreement yesterday.

18 Q. Okay. And in negotiating the agreements, was changing
19 provision so that an alternative transaction fee would not be
20 available during the period that investors could walk away for
21 any reason or no reason a topic?

22 A. The board had a very extensive discussion on the terms of
23 the fees, not only the amount and how they compare to market,
24 but also the terms and conditions under which the fees would be
25 received and, again, I think the board understood some of the

1 issues you're describing but looking at the agreement as a
2 whole felt that the agreement was a reasonable one.

3 Q. Did anyone explain to the board that it was unusual for
4 investors to have an opportunity to earn an alternate
5 transaction fee during a period that they could walk away for
6 any reason or no reason?

7 A. Again, I think the board understood the terms under which
8 the fees would be received or not received and assessed those
9 terms in the context of the overall agreement and their
10 extensive experience of understanding how this very complex
11 transaction had been negotiated over months. I think the board
12 had a very detailed sense of the back and forth among not just
13 the investors that are parties to the framework agreement but
14 the other parties, and that there are a whole host of terms
15 that have to be negotiated to reach the point we are now. We
16 got what we wanted with some, less with others. That's the
17 challenge of putting an extraordinarily complex reorganization
18 in place.

19 Q. And did you advise the board that in your experience as an
20 investment banker that the availability of such fees during
21 such a period was highly unusual?

22 A. My presentation to the board focused on -- specifically on
23 the amount of the fees and how they related to the market but
24 in general, I commented that the terms of the fees and expenses
25 and reimbursement, again, looking at all the factors, including

1 the points that you mentioned, were reasonable in this case.

2 Q. So when you say "in general", you didn't have a specific
3 conversation with the board about this aspect of the fees that
4 they could be payable during the period when the investors
5 could walk away for any reason or no reason?

6 A. Well, as I said, I did not have that discussion. Skadden
7 had that discussion. I participated. I spoke to the financial
8 aspects of the fees. Skadden spoke to the legal terms and
9 conditions of the fees. And then at the end I gave my view.

10 Q. But you didn't tell them that in your experience that this
11 was unusual?

12 A. I think I just answered that question.

13 Q. Okay. When the board talked about fees in general, you
14 helped them understand whether the fees were reasonable,
15 correct?

16 A. Whether they were market.

17 Q. And you prepared materials for the board on that basis,
18 correct?

19 A. There -- we, Rothschild, prepared materials and then I
20 spoke to the board and spoke off of, among other things, the
21 exhibit you have in -- in front of me now.

22 Q. Right. And that's Exhibit number 20 that's in the book in
23 front of you and it's page 1809.

24 A. Thanks.

25 MR. BUTLER: I'm sorry. What's the page number

1 again?

2 MS. STEINGART: I think it's 1809.

3 MR. BUTLER: No. There's no page number --

4 MS. STEINGART: I'm sorry? Oh, that's a different --
5 oh, 1769, I'm sorry. 1769.

6 MR. BUTLER: Nope.

7 MS. STEINGART: Isn't there a 1769?

8 MR. BUTLER: There is but it's not joint. Just tell
9 me what that says and then we'll find it.

10 MS. STEINGART: It's 1809. It is. It says 1809. Am
11 I in 21 instead of 20?

12 MR. BUTLER: Yes.

13 THE WITNESS: So, it's 21 --

14 MS. STEINGART: Yeah, 1809.

15 THE WITNESS: Okay.

16 Q. Okay. And just to help move this along, you explained
17 during your deposition that you gave the views on November 14th
18 to the board that the fee structure or the fees being
19 proposed -- the amount of the fees being proposed were
20 reasonable, correct?

21 A. Were market, yes.

22 Q. Were market, I'm sorry. And you said that in terms of
23 total amount but not in terms of other terms and conditions
24 that were pertinent to the fees, right?

25 A. Correct, but I was speaking about and asked to speak about

1 was the amount of the fees.

2 Q. And thereafter, you didn't make another presentation with
3 respect to fees to the board, correct?

4 A. I think that we provided an update to the board. I
5 believe there was a call on the 18th because the fees had
6 changed slightly. That's when we were able to, I think, reach
7 the agreement on the one and three-quarters -- we were going
8 back and forth on that so whenever there was a change usually
9 we touched on that.

10 Q. And at the time the Board met on December 11th to
11 authorize filing of the agreements for approval with this
12 Court, there was no further review or discussion of the fees,
13 correct?

14 A. 'Cause the amount of the fees hadn't changed.

15 Q. Okay. Now, during this period of time, you also provided
16 the board with some information about discounts that the plan
17 investors were receiving, correct, with respect to preferred
18 stock and common stock?

19 A. Well, that information consistently was in the
20 presentations we made at the same time we had these side by
21 side charts.

22 Q. Right. So if we went to Exhibit 20 and to page 1769, we
23 would see another presentation that you made about value in
24 connection with the proposed agreements.

25 A. Correct.

1 Q. And this page 769 (sic) showed the value being provided to
2 plan investors through their participation in the rights
3 offering, correct? Or as a backstop, right?

4 A. No, not necessarily. I -- and I went through this
5 extensively at my deposition. I would not describe this as
6 value because it's speculative as to where the stock will
7 trade. This was a conservative assessment using the difference
8 between the rights offering price and the price we were using
9 for the plan of what that implied or is the number of that
10 implied discount. And it's very different to describe that as
11 a number and to say that that value they will be receiving. I
12 don't know they will be receiving that. I know if the Court
13 approves these fees and conditions apply they will get ten
14 million dollars at a certain period of time. I can't tell you
15 they will get sixty-three million dollars. And that's the
16 difference that your partner and I had in communicating this
17 issue during my deposition.

18 Q. Well, isn't that the assumption that everyone is making?

19 A. Pardon?

20 Q. Isn't that the assumption that underlies the negotiation
21 of this transaction?

22 A. I think that's the assumption of some people, but I don't
23 think that's the assumption of every person.

24 Q. Well, do you think that the forty-five dollar plan value
25 is unreasonable?

1 A. We have not done a formal evaluation of the plan because
2 the plan reorganization doesn't exist yet.

3 Q. So when the disclosure statement is filed, the plan value
4 may be an altogether different number, won't it?

5 A. It could be --

6 Q. It could be.

7 A. -- and the market when a disclosure statement is out will
8 have a much better assessment in terms of applying -- implying
9 a value for the plan than it does today when it has incomplete
10 and imperfect information in front of it.

11 Q. And the people who will also have a much better idea of
12 value when the disclosure statement comes out are the plan
13 investors as well, correct?

14 A. I think they have the fairly good assessment value now
15 because they've done a very extensive amount of diligence over
16 a fairly significant period of time.

17 Q. But the value of the company will also be impacted by
18 agreements with labor and GM, won't it?

19 A. Yes.

20 Q. And those agreements will be known by the time the
21 disclosure statement is filed, correct?

22 A. Correct.

23 Q. And when the disclosure statement is filed and those
24 agreements are known, if the plan investors don't like value
25 anymore, they can terminate, can't they?

1 A. I have to look at what the period of time is and what the
2 terms are under the agreement.

3 Q. Well, do you think that the disclosure statement is going
4 to be approved before April 1st?

5 A. Don't know. Depends how quickly the GM and labor
6 provisions can be negotiated.

7 Q. Have you seen Mr. Butler's most aggressive timelines?

8 A. I've seen a lot of timelines from Mr. Butler.

9 Q. And have you seen any --

10 MR. BUTLER: Excuse me. Will you let him finish his
11 answer?

12 MS. STEINGART: Oh, I'm sorry.

13 A. I've seen a lot of timelines from Mr. Butler.

14 Q. And have you seen any in the past week that would have the
15 disclosure statement approved before April 1st?

16 A. I don't recall.

17 Q. But you don't think so, do you?

18 A. I don't believe so but I haven't --

19 Q. Okay. So --

20 A. -- been focused on timelines over the past several weeks.

21 Q. Fine. So you say that when the disclosure statement is
22 filed that everyone's going to have a better look at the
23 economics and when it's filed the plan investors get to walk
24 away if they're not getting those kinds of implied value in the
25 discounts, can't they?

1 A. Again, I have to look at the terms that set forth their
2 ability to walk away.

3 Q. That's right. And this terrible uncertainty you have
4 about communicating how much the investors are willing to give
5 prevented you from providing the board with an assessment that
6 included those numbers, didn't it, in one document?

7 A. I --

8 MR. BUTLER: Objection. That's argumentative. It's
9 testified -- I don't know what the question is. This terrible
10 uncertainty prevented you from doing something?

11 Q. Did you ever --

12 MR. BUTLER: He didn't testify to terrible
13 uncertainty.

14 MS. STEINGART: All right. I will --

15 THE COURT: Did you understand the question?

16 MS. STEINGART: I'll rephrase. I'll rephrase.

17 Q. Did you ever provide in one document to the board of
18 directors, information showing what the values would be in
19 terms of the preferred commitment adding up both the commitment
20 fee and the applied value of the discounts?

21 A. We provided that information the way that we thought was
22 appropriate. And as I've explained, the way we thought was
23 appropriate is to set forth fees that can actually be
24 determined and would be paid as we did on page 1809 with
25 respect to the commitment fees and the alternative transaction

1 fee. And we indicated the additional amount with respect to a
2 discount should that discount exist in a separate place where
3 we have consistently analyzed it before because we did not view
4 that portion of the fee the same way we viewed the other fees.
5 And in my judgment as an investment banker, it was not
6 appropriate to present it that way --

7 Q. Okay, but --

8 A. -- because one was --

9 Q. Yeah?

10 A. One is specific and the others are less certain.

11 Q. So the answer to my question is that you never presented
12 to the board in one document the number that showed the
13 commitment fee and the implied value of the discount, correct?

14 A. Because it would have been misleading to do so.

15 Q. Did you do it in one document?

16 THE COURT: He's already answered it. He didn't.

17 A. No. Because in my professional judgment it wouldn't have
18 been appropriate to do it that way.

19 Q. And did you ever show the board what this number was in
20 print that was bigger than a sixteenth of an inch?

21 THE COURT: Ms. Steingart, come on.

22 MS. STEINGART: I want to know what professional --
23 I'm trying to understand what professional judgment pertains to
24 showing a Board a 343 million dollar number that they're giving
25 away from stakeholders in print that's this big. So I think I

1 need to get behind that professional judgment.

2 THE COURT: Ms. Steingart, you read a number of
3 prospectuses, right?

4 MS. STEINGART: I'm sorry?

5 THE COURT: 8Ks, 10Qs? Maybe that's why you couldn't
6 read the e-mail earlier?

7 MS. STEINGART: Well, you know, that's my problem.
8 And you know what? And you know what? Though I don't want to
9 cast criticisms on the board, my guess is they're older than
10 me. They're not by a lot, and that if I can't see it, they
11 can't see it.

12 MR. BUTLER: Ms. Steingart, would it help you if we
13 told you that it was projected up on a big screen?

14 THE WITNESS: I was just going to say that.

15 MR. BUTLER: And that actually it was about four
16 inches high.

17 MS. STEINGART: You know what? This is going to have
18 to be projected on the Empire State Building in order to --

19 THE COURT: All right. Let's move on.

20 MS. STEINGART: Okay. Moving on.

21 Q. Okay. So you never provided them the document that looked
22 like this? And you never provided them one that looked like
23 that either, did you?

24 A. I can't see that. Just pulling your leg a little.

25 Q. You get points for that, Mr. Resnick, you get points.

1 A. No. We never provided them with the document that looks
2 like this.

3 Q. Okay. Now, you said that your advice that the numbers
4 were market -- on this exhibit we're premised on different
5 things, right?

6 A. Yes.

7 Q. Okay. One of the things that you said that it was
8 premised on was the competing proposal by the UCC and EC,
9 correct?

10 THE COURT: I'm sorry. I can't see -- what is this,
11 Exhibit 21?

12 MS. STEINGART: Yeah. That's 21, it's 1809.

13 THE COURT: Okay. All right.

14 Q. And the other things that you said it was premised on were
15 two data runs that your firm had produced to you, correct?

16 A. Correct.

17 Q. Okay. And if you look at Exhibit number 67 -- and I'm
18 looking -- what number is this?

19 A. It's 66.

20 Q. 66 --

21 THE COURT: I'm sorry. What exhibit is it then?

22 MS. STEINGART: 66, Your Honor, and 67.

23 THE COURT: Exhibit 66?

24 Q. These were the two backups that you were looking at when
25 you formulated your view that the amount of the fees were

1 market, correct?

2 A. Exhibit 67 and Exhibit 66 and the document that was
3 provided to the company by the equity committee and the
4 unsecured creditors' committee with their counterproposal that
5 included fees.

6 Q. Right. This here.

7 A. Well, that's the summary of it but --

8 Q. But that proposal's is right, correct?

9 A. Pardon?

10 Q. Yes. Right? And that proposal lists three things?

11 A. Yes.

12 Q. Okay. Now, if we look at the -- at Exhibit 66, the POR
13 means Plan of Reorganization rights offerings, correct?

14 A. Yes.

15 Q. And is it fair to say that the two that are most close in
16 size to the offering we have before us today are Owens Corning
17 and USG?

18 A. Most close in total size. They're the largest, too.

19 Q. Right. And in either of those two, did the investor
20 receive shares at a discount in addition to the commitment fee
21 that's listed here?

22 A. Not in those two.

23 Q. Any of these?

24 A. Yes. In Intermet.

25 Q. In?

1 A. Intermet. The third from the bottom.

2 Q. Did you explain to the board when you were telling them
3 that this arrangement was market that you had backup that
4 showed of fifteen companies listed only one other investor had
5 received rights at a discount in addition to a commitment fee?

6 A. The purpose of this exhibit was to speak to the board
7 actually on the numbers -- well, again, we did not use this
8 exhibit with the board. This was an exhibit that was shared
9 with the management team but it was the basis for giving the
10 management team comfort that the fees we were negotiating which
11 it could see on the 2046 in the fee column were reasonable --
12 were market. I'm sorry. Were market.

13 Q. Right. So, again, Mr. Resnick, I need you to answer my
14 question. Mr. Butler will be able to ask you questions when
15 I'm done and this will go quicker if you answer my questions.
16 Okay? So you never told the board that in the backup list that
17 you had that gave you comfort that the fees were market that
18 only one of the approximately fifteen were getting discount
19 shares in addition to a commitment fee, right?

20 A. I knew that there were a small number of rights offerings
21 in the market, one on this page but there are others where plan
22 investors received shares as part of their fee. That's my
23 experience in my twenty-two years as a banker.

24 THE COURT: Your Honor, I would ask for direction to
25 the witness to answer my questions. Or otherwise we're going

1 to be --

2 THE COURT: Which one? The last one?

3 MS. STEINGART: The last one would be nice.

4 THE COURT: Okay. Why don't you repeat it again?

5 Q. Okay. Did you tell the board when you were advising that
6 this fee was market for the rights offering that in the list
7 that you used of the fifteen or so transactions listed only one
8 investor received discounted shares in addition to a commitment
9 fee? Did you tell them that?

10 A. I did not tell them that specific statement, no.

11 Q. Okay. Now, there was also information that you received
12 from Rothschild so that you could -- that was called a
13 comparable convertible preferred analysis. Do you remember
14 that document?

15 A. Yes.

16 Q. Okay. And if we look at it at Exhibit 94, can you tell me
17 if that's that analysis?

18 A. Yes. That's the analysis.

19 Q. Okay. Now, I have your deposition -- you testified that
20 you didn't know of any other offering of preferred shares -- of
21 convertible preferred in a public company that were offered at
22 a discount, correct?

23 A. Correct.

24 Q. And indeed, this chart that is Exhibit 94 attached to the
25 e-mail confirms that, right?

1 A. But that was not the purpose of this chart.

2 Q. I'm sorry. You still need to answer my question. Mr.
3 Butler can ask you what the purpose of the chart was. Okay?

4 MR. BUTLER: Could you repeat the question?

5 Q. That opinion that you gave that there was no other
6 convertible preferred that had been issued in connection with a
7 public company that was sold at a discount, that hadn't been
8 done for, correct? That's what you testified, right?

9 A. Yes. But that's not the reason this exhibit --

10 Q. Is that confirmed --

11 A. -- was prepared. To confirm that point.

12 Q. I understand that but isn't that confirmed by the data in
13 this chart? I'm just saying that you're right, Mr. Resnick.

14 A. Yes.

15 Q. Okay. Now, this is not a chart that you provided to the
16 board, was it?

17 A. No.

18 Q. And you didn't even tell the board that you had never
19 known of a convertible preferred being issued in connection
20 with a public company that were offered at a discount. You
21 didn't tell them that?

22 A. We told the board -- I told the board, when we were
23 describing the terms of the AHC proposal, that the way the
24 convertible preferred was structured at a discount plan
25 valuation was unusual because the reason was AHC was a hybrid

1 deal. It was taking the Cerberus proposal that the company had
2 received and combining with the Appaloosa proposal. The
3 Appaloosa proposal was a rights offering only driven
4 restructuring plan. The Cerberus plan was one that had a
5 convertible preferred where the company would be private. Or
6 if not, the convertible preferred would control the company.
7 So what happened when the two were combined was to have
8 elements of each in the discount feature to the convertible
9 preferred was to make analytically the proposal similar to the
10 Appaloosa deal by having a buy-in value to be converted at a
11 value different than the face amount.

12 Q. I see. So it was because you wanted the rights offering
13 to look like a convertible preferred that you're giving the
14 plan investors 343 million dollars in value. Is that why?

15 A. No. It's absolutely not why.

16 Q. Why? Because its advantage you -- a deal point is that
17 they can want a discount on the convertible preferred, correct?

18 A. No. The reason was because there was a difference in view
19 on value between the unsecured creditors and General Motors and
20 the plan investors. The plan investors having done substantial
21 due diligence, GM and the unsecured creditors having done
22 substantial due diligence and we were trying to bring the
23 parties together as is typical in every restructuring around
24 the consensual deal. In valuation of views on a value is an
25 art and not a science and securities like rights offerings,

1 like warrants, like convertible preferred securities, are used
2 to bridge different views of value. And that's what was
3 happening in this case.

4 Q. Okay. Again, let's try to answer my question. Okay? So
5 the plan investors said we want this at thirty-five even though
6 the plan value is forty-five, right?

7 A. Absolutely not.

8 Q. And did you say --

9 A. That's incorrect.

10 Q. Well, they didn't say that -- well, that's what Mr.
11 Sheehan said. Are you saying that Mr. Sheehan was wrong?

12 A. No.

13 Q. Okay. Well, that's what he testified to in this courtroom
14 just an hour ago. He said the plan investors said I want this
15 for thirty-five even though plan value is forty-five. And he
16 said yes.

17 A. I think what Mr. Sheehan was reflecting was a difference
18 in view. If you understand how this transaction came together,
19 there was a value used for the GM/unsecured creditors' deal
20 which came out at the roughly forty-five dollars a share. The
21 parties that were putting in new money, Appaloosa and
22 Cerberus -- it's very different to have a value when you're not
23 putting your own money on the line. People who do that usually
24 have a much sharper view of value because they're putting in
25 their -- their own money. This was several billion dollars.

1 Q. Have they put in their own money?

2 A. They're committing to put their own money, yes.

3 Q. And when will that happen?

4 A. When the conditions are satisfied. But when we were
5 structuring a deal, there was new money coming into the
6 transaction. They had done their diligence and their view on
7 value was at the thirty-five dollar value versus where GM and
8 the unsecured creditors committee was. And the way we bridged
9 that gap was by having certain parties receive their equity,
10 like the unsecured creditors, and the trust preferred and
11 General Motors at a higher value but the new money that was
12 coming in was doing -- was coming in at a lower number. And
13 that's how we were able to bring a consensual deal together.

14 Q. Okay. So you didn't provide the board with Exhibit 94,
15 correct?

16 A. No.

17 Q. And you didn't tell the board that the transactions you
18 looked at to decide if things were market and in your own
19 knowledge -- in your own knowledge of convertible preferreds
20 that discounts didn't occur with public companies, right?

21 A. The purpose of this exhibit was --

22 Q. Sir, can you answer my question?

23 A. -- to negotiate two other features of the preferred.

24 Q. Mr. Resnick, Mr. Resnick, will you excuse me? You can
25 answer my question, can't you?

1 A. You can -- you can --

2 Q. I know you were a lawyer before you became an investment
3 banker but you can give a yes or no answer, can't you?

4 A. Sometimes.

5 Q. Okay. Well, let's see if you can do it today because
6 otherwise we're not going to be done. Okay? So at the end of
7 the day, we have a situation where the investors get what is an
8 implied discount from plan value, correct?

9 A. From a theoretical plan value, correct.

10 Q. And at the time that they get committed, they get to see
11 that plan value in a much less theoretical way, don't they?
12 Yes or no?

13 A. Yes.

14 Q. Okay. And they have the ability to walk away if they
15 don't like the way that theoretical value looks, correct?

16 THE COURT: We went over this --

17 MS. STEINGART: Okay.

18 Q. Now, Mr. Resnick, can you tell me, does the company -- if
19 after April 1st and this filing the disclosure statement, if
20 the stock is trading implied value seventy dollars, can the
21 company say to the plan investors, oh, you're getting too
22 much -- and walk away without any obligation?

23 A. I'm sorry. After April 1st --

24 Q. After April 1st and after the disclosure statement is
25 filed and before approval, if they say, oh, my goodness, the

1 applied value is seven dollars a share. These guys are getting
2 thirty-five dollars a share. I have to multiply this really,
3 really big number by thirty-five. Can the company walk away?

4 A. As I said, I'm not familiar with the most recent changes
5 that were negotiated in the past --

6 Q. Okay. Fair enough.

7 A. -- day.

8 Q. Let's talk about how the company was shot, if I could find
9 my outline here. There was never a time that Rothschild was
10 instructed to go out and make contacts so that Rothschild could
11 determine the universe of financially capable investors who
12 would be interested in this company, correct?

13 A. What time period are you referring to?

14 Q. Any time period. From the time that Rothschild was
15 retained, which was pre-bankruptcy, to today, Rothschild was
16 never instructed to go out on behalf of the company and contact
17 financial capable buyers, identified by Rothschild, who might
18 be interested in providing capital, correct?

19 A. No.

20 Q. You did or you didn't?

21 A. That's not correct.

22 Q. Okay. Then when you said at your deposition that what you
23 did was to -- because everyone knew that the company was in
24 bankruptcy and about to file for bankruptcy; that you just
25 waited for people to come and see you and that you didn't go

1 out and solicit interest? That was incorrect?

2 MR. BUTLER: I'm sorry. When you -- if you're going
3 to refer to the deposition, will you please give us the cite?

4 MS. STEINGART: Let me find my notes.

5 Q. Do you recall that kind of testimony?

6 MR. BUTLER: I'm sorry. Could you --

7 MS. STEINGART: Yes, I will. Let's start in the
8 period August 2006. And that would be --

9 Q. Mr. Resnick, if I could direct you to page 26.

10 THE COURT: Do you have a copy of your deposition?

11 THE WITNESS: I'm sorry.

12 MR. BUTLER: This would be Exhibit 77, page 26.

13 Q. 26, line 2.

14 A. Well, I think that I said prior to that time period and
15 the reason I was disagreeing with your question was that the
16 time the company originally retained Rothschild, it had a
17 con -- it had received contacts from Cerberus and, I believe,
18 Ripplewood. And one of the first items we discussed with the
19 company was how we should engage with those parties, if we
20 should, and should we contact other parties. And we decided
21 that we would contact other parties and that's why I disagreed
22 with your question, because we did.

23 Q. And how many other parties did you contact?

24 A. My recollection was we talked about a number of other
25 private equity firms and ultimately the company authorized us

1 to contact, I believe, two or three other firms in addition to
2 Cerberus and Ripplewood.

3 Q. So in addition to Cerberus and Ripplewood, you made
4 contact with two or three others on behalf of the company?

5 A. Correct.

6 Q. And after the August time frame, did Rothschild make
7 contact -- initiate contact with any other investor that was
8 determined to be financially responsible in order to ascertain
9 interest?

10 A. August of what year?

11 Q. After August of 2006.

12 A. August 2006? No.

13 Q. So, before 2006, there was Cerberus and Ripplewood and
14 maybe two or three others, correct?

15 A. Correct.

16 Q. And those were all contacts you initiated? These weren't
17 contacts of funds that had come to the company who the company
18 referred to you?

19 A. No. I'm talking about the period when we were retained,
20 which was May of '05, and we had learned the company had
21 received contacts from Cerberus and Ripplewood and we discussed
22 with management whether we should engage with them or not. We
23 decided we should and that we should reach out to several other
24 parties but given the complexity of the situation facing Delphi
25 decided to limit to a small group of sophisticated investors

1 that knew the automotive industry, that had some familiarity
2 with restructuring transactions and were of the size and had
3 the financial capability, like Cerberus and Ripplewood, to
4 invest in the size that would be required to help Delphi. And
5 that was some of our work pre-petition.

6 Q. Okay. So, pre-petition, Cerberus, Ripplewood, two or
7 three others, right?

8 A. Correct.

9 Q. Okay. Then we get to filing the bankruptcy, right?

10 A. Yes.

11 Q. And the bankruptcy was filed in October 2005?

12 A. Correct.

13 Q. Okay. And after the bankruptcy was filed, Rothschild was
14 never asked to contact -- to go out and make contact with
15 financially capable investors. Yes or no?

16 A. No.

17 Q. And when the board began -- I'm sorry. When the company
18 began to undertake framework discussions in the summer of, I
19 guess, 2006, discussions were had with Cerberus, right?

20 A. Yes.

21 Q. With Ripplewood?

22 A. Yes.

23 Q. And Appaloosa, who had approached -- and that's a benign
24 way of saying it -- the company.

25 A. Yes, along with GM and the UCC who had also formulated

1 their own restructuring proposal.

2 Q. And as those discussions developed, eventually we got to
3 the point where the company determined to pursue the
4 transactions proposed by what has now become AHC, right?

5 A. Yes.

6 Q. And thereafter, we get from the summer to the fall and the
7 framework agreements are negotiated among the debtors and, I
8 guess, GM and the investors, correct?

9 A. Yes.

10 Q. Now, in the course of filing in the omnibus reply that was
11 filed in court today or yesterday, there was a statement that
12 breakup fees are important tools to encourage bidding and can
13 be necessary because the directors have a duty to encourage
14 bidding. And that's at paragraph 27 of the reply. Are you
15 familiar with that concept?

16 A. The concept, yes.

17 Q. Okay. And you're familiar with factors that potential
18 bidders consider when determining whether to come into a
19 situation like this to try to become involved, correct?

20 A. Yes.

21 Q. And one thing they would consider would be the size and
22 the structure of the breakup fee, right?

23 A. Yes.

24 Q. They would consider bidding procedures, correct?

25 A. Yes.

1 Q. They would consider what the requirements are for a
2 qualified bid?

3 A. Yes.

4 Q. They would consider the attitude of the company in dealing
5 with potential bidders, correct?

6 A. Yes.

7 Q. Does the EPCA, to your knowledge, establish any procedure
8 for third parties to become a qualified bidder?

9 A. No.

10 Q. Does it set up parameters that a bidder might satisfy to
11 engage in discussions?

12 A. I think by laying out the terms of the AHC transaction it
13 does what you would like a stalking horse proposal to do. It
14 sets forth the financial parameters. I think that's why
15 Highland was able so quickly to turn around with the
16 counterproposal.

17 Q. And at this point in time, is it your understanding that
18 the company is interested in receiving expressions of interest
19 so that it can determine whether in fact the proposal being
20 provided to this support is the highest best offer?

21 A. I think that's the company's fiduciary obligation.

22 Q. It is its fiduciary obligations. And has the company
23 positioned itself to do that?

24 A. I think so.

25 Q. Now, has the company let potential bidders know in the

1 EPCA or some other public statement what the company considers
2 to be the timing constraints of potential bidders who might
3 emerge?

4 A. I think some of the dates by which certain events have to
5 occur is an indication of what the timing is.

6 Q. And has the company indicated generally that if bidders
7 come forward within a discrete period of time that the company
8 can entertain competing bids so that it can be sure it has the
9 highest best offer?

10 A. Well, I think two things. First, I think the company has
11 made clear it's -- it has run what it believes and I believe to
12 be a very effective process for several months leading up to
13 this proposal. And second, I think the company has indicated
14 that for reasons specific and unique to this case, timing is
15 critical in terms of bringing a transaction to closure. And I
16 think parties that had contacted the company prior to the
17 announcement of the AHC deal were told that explicitly and
18 parties subsequent to the filing have been told the timing
19 issues as well. So --

20 Q. So what's the access --

21 A. -- I think the company has communicated.

22 Q. So there are timing constraints that you --

23 MS. STEINGART: Strike that.

24 Q. One of the responses in a piece that you prepared with
25 respect to Highland proposal is that there are concerns because

1 timing issues must be dealt with in connection with anyone who
2 comes to the table at this point, isn't that fair?

3 A. Yes.

4 Q. Now, is there a point where those concerns make it
5 impossible for anyone else to come into this process and offer
6 a greater value to the estate?

7 A. I wouldn't say impossible. I would say make it more
8 difficult.

9 Q. And when is that?

10 A. I think as we get toward the end of the first quarter,
11 some of the deadlines in the agreement of -- reaching an
12 agreement with GM and the UAW, it becomes more difficult but I
13 think if someone sees tremendous value there is the ability to
14 come in and top the AHC deal.

15 Q. So you're saying that between now and the end of the first
16 quarter. And what date do you think of when you say the end of
17 the first quarter?

18 A. The end of the first quarter is March 31st.

19 Q. Okay.

20 A. I mean, I picked out --

21 Q. Okay. So between now and March 31st --

22 A. -- somewhat arbitrarily.

23 Q. -- you think that there's a window of opportunity for
24 responsible investors to come in and have a real shot, an equal
25 shot, if they offer a better deal to be the plan's sponsor?

1 A. I would say the window of opportunity exists up to the
2 approval of the disclosure statement. But in trying to respond
3 to your question, I think the window begins to close the closer
4 you get to a disclosure statement hearing which, as you pointed
5 out, is to be sometime after April 1st.

6 Q. Well, since the window is closing, shouldn't the debtors
7 have procedures in place so that to the extent that there are
8 responsible bidders out there, they can come in and take
9 advantage of this diminishing time frame where a relevant
10 proposal can be made?

11 A. I think the debtor indicated that it would respond
12 promptly and thoroughly to any proposal that it receives and I
13 think that was demonstrated by how the debtor responded to the
14 Highland proposal. I think that's the best evidence of the
15 debtors' serious commitment to its fiduciary obligations, to
16 maximize value.

17 Q. But my question, Mr. -- my question was to the extent that
18 there's a closing window, doesn't it make sense to have
19 procedures in place so that there is some sort of quid pro quo
20 for awarding somebody who hasn't made a commitment a breakup
21 fee?

22 A. I think there is a procedure which is to respond promptly
23 to any proposal, and we have a breakup fee so that we can take
24 advantage of what we have and if someone else has tremendous
25 value, a hundred million dollars for a transaction of this

1 size, if someone sees huge value, I think as I demonstrated in
2 one of the other exhibits, is market for a breakup fee. We
3 also have to balance the risks to the estate of not moving
4 forward in trying to bring Delphi out of bankruptcy. That's
5 the other issue that the board has to balance in looking at
6 proposals that come in at a very late date when parties have
7 had ample opportunities to make proposals.

8 Q. Well, I'm talking about your window. I'm not talking
9 about a very late date. I'm talking about the window now that
10 you said that exists between now and the end of March. You've
11 represented bidders on occasion, correct? Like, you don't
12 always represent bidders, do you?

13 A. I've represented bidders.

14 Q. And isn't it more efficient and more effective for bidders
15 to know what's expected of them, what the rules are, what they
16 have to show, what the timing is, so that they can make the cut
17 and come in and be considered without having to create the
18 rules as they go along?

19 A. I think any bidder looking at the proposal in the
20 framework agreement knows the bogey that a bidder has to beat,
21 from a financial perspective, and they know the challenges
22 facing them in coming into a transaction like Delphi. This is
23 not a plain vanilla case where the only issue is value. There
24 are issues relating to General Motors, to the company's unions,
25 to other stakeholders that have to be addressed. This is not

1 just about money alone.

2 Q. So are you saying there's no window?

3 A. No. I explained --

4 Q. Okay. So if there's a win --

5 A. -- to you I thought there is a window.

6 Q. Right. So why can't you --

7 A. And I think that the debtor --

8 MR. BUTLER: Please let him answer the question.

9 MS. STEINGART: Okay.

10 A. -- that the debtor has laid out clearly the bogeys that
11 parties have to address in coming back with a counterproposal.

12 Q. Well --

13 A. I think it's clear in the debtors' response to the
14 Highland proposal.

15 Q. In your professional opinion, wouldn't the debtors be
16 receiving more of these inquiries if they established a window
17 period and let investors know how they could come in in a
18 meaningful and non-disruptive way?

19 A. Not necessarily for a case like this, no.

20 Q. Now, is one of the problems with getting people in and
21 keeping people in the fact that GM has already said publicly
22 it's not talking to anyone else?

23 A. I don't think so.

24 MS. STEINGART: Your Honor, I have no further
25 questions.

1 THE COURT: Okay. Before -- just while we're on this
2 topic, does the company have a data room or data process so
3 that someone like Highland or anyone else wants to pursue due
4 diligence doesn't have to start from scratch?

5 THE WITNESS: Yes, Your Honor. Very extensive one
6 that it's used for all the other parties that have come through
7 and have done diligence.

8 THE COURT: Do you have cross?

9 MR. HAIL: Your Honor, my partner, Lenny Parkins.

10 THE COURT: Oh, all right.

11 CROSS-EXAMINATION BY

12 MR. PARKINS:

13 Q. Good afternoon, Mr. Resnick. My name is Lenard Parkins.
14 I'm with Haynes & Boone. I represent Highland Capital. Mr.
15 Resnick, I just want to follow up on some of the questions
16 asked by counsel for the equity committee and I'll try to be
17 brief. The Cerberus and Ripplewood due diligence first began
18 in 2005, is that correct?

19 A. That's correct.

20 Q. And I think that you testified, and I think it's correct,
21 isn't it, that they did substantial due diligence in 2005
22 before the filing of the Delphi bankruptcy case?

23 A. I would say they did some extensive due diligence -- they
24 were at the company and they looked at a reasonable amount of
25 financial information so they could understand the company's

1 projections and the issues at base but they didn't do things
2 like legal due diligence or environmental, things like that.

3 Q. All right. Then turning to 2006, we had Appaloosa
4 Harbinger, I think, signed an NDA and started doing their due
5 diligence May, June, July time frame, is that correct?

6 A. That's correct.

7 Q. Of 2006. And about that time, July, August of 2006, the
8 company sought to re-embrace Cerberus and Ripplewood, is that
9 correct?

10 A. Yes.

11 Q. And new NDAs were signed and they restarted their due
12 diligence, is that correct?

13 A. Yes.

14 Q. Did anybody just have thirty or sixty days of due
15 diligence time before either of any proposals were made?

16 A. I'm just trying --

17 MR. PARKINS: Let me withdraw the question.

18 Q. I'll ask you another question. How much due diligence
19 time did Cerberus have before it made its proposal?

20 A. Cerberus -- we resigned their NDA, I believe, sometime in
21 August but that's based on my --

22 Q. But they had a history already of some due diligence
23 prior?

24 A. They had but that financial information that they had seen
25 was stale and -- while they understood the business, the

1 financial data on which they might base a proposal was very
2 different.

3 Q. So Cerberus had -- let's call it a little head start but
4 August, September, October, November before they made their
5 proposal, is that correct?

6 A. Yes.

7 Q. At least three, three and a half months plus what they had
8 in '05. Appaloosa had three months, correct, before they --

9 A. Yes.

10 Q. -- really started engaging in discussions. And it's true,
11 isn't it, that when the company decided that it wanted to seek
12 to embrace outside equity investments, that one of the
13 threshold issues that had to be overcome, not only did it have
14 to be qualified, sophisticated, experienced in bankruptcy,
15 okay, but they had to be able to deliver, in the company's
16 judgment, proposals so that the company could execute and exit
17 bankruptcy by July, August of 2007, is that correct?

18 A. Yes.

19 Q. And, in fact, the other people you talked to in the fall
20 of 2006, okay, were unable to, in your judgment, to qualify
21 someone who either was qualified as experienced, knowledgeable,
22 sophisticated, but who could deliver, in your judgment -- your,
23 the company's judgment, closure by July, August of 2007, is
24 that correct?

25 A. No, that's not correct.

1 Q. Well, what other people signed NDAs other than Ripplewood,
2 Cerberus and Appaloosa and Harbinger?

3 A. I think one of the other parties we were talking to was
4 someone who was familiar with the company because they had an
5 investment in the capital structure and were considering going
6 forward and signing an NDA, or potentially partnering, or not
7 moving forward. Had that party come back to us and said they
8 wanted to move forward on their own, I think the company would
9 have been prepared to sign an NDA with them.

10 Q. But they did not do so?

11 A. They chose not to do so.

12 Q. So in November, isn't it a fact -- November of 2006, isn't
13 it a fact that the runners for contention here to do a deal
14 with Delphi were Cerberus, Appaloosa and Ripplewood?

15 A. At that time, yes.

16 Q. Okay, at that time. And, in fact, there was an
17 affirmative undertaking that you were not going to expand --
18 the company was not going to expand the search, really, the
19 net, I think was terms used, to seek out others because of the
20 problem of getting their due diligence done timely so you could
21 exit by the summer of '07, is that correct?

22 A. We had raised that issue with our board and both of our
23 official committees and that was the consensus from all three
24 of those groups.

25 Q. Okay. So the narrowing -- we take a maybe a broader

1 pool -- it wasn't so broad but a pool of potential candidates
2 and it narrows down as we get to November to two or three
3 candidates and then it narrowed, am I correct, to two, the
4 joinder of Appaloosa and Cerberus, is that correct?

5 A. Yes.

6 Q. Okay. Now, I just think we just went through that each of
7 those had done at least three and a half -- three to three and
8 a half months of due diligence before they were prepared to
9 make an offer on their own, is that correct?

10 A. Yes.

11 Q. Okay. Now, assuming that a sophisticated investor wanted
12 to do due diligence for an equal amount of time on a three or
13 four billion dollar deal, just as Cerberus and Appaloosa and
14 Ripplewood had done, is there a three, three and a half months
15 for that person to do due diligence now and meet your July 7
16 exit date?

17 A. I think they would have to expedite their diligence some
18 to meet that timetable but I think the company now has -- very
19 close at having a new business plan that would make diligence
20 easier for potential investors and that one of the complexities
21 of the diligence before was that the company's financial
22 information was a bit complex because of the overlays on its
23 pre-existing plan from the attrition and buyout deals and some
24 of the changes that it made to its prior business plan. The
25 current business plan that the company discussed with the board

1 yesterday, that will be available to the various stakeholders,
2 simplifies all of those overlays and, therefore, I think anyone
3 coming in to do diligence starts from a point that will make it
4 easier to understand the company's financial information.

5 Q. So it might but you don't know for sure that it might take
6 less time than Cerberus, Appaloosa and Ripplewood did in making
7 their assessment to make offers?

8 A. I think it could take less time but I can't say that with
9 certainty.

10 Q. Do you consider Cerberus and Appaloosa and Ripplewood
11 relatively sophisticated, knowledgeable players in this
12 industry and investors?

13 A. Yes.

14 Q. And I take it your threshold for looking at qualified
15 investors was probably the same level of sophistication and
16 knowledge and commitment. Is that true going forward if it was
17 an alternative?

18 A. Yes.

19 Q. Okay. Now, Mr. Resnick, have you heard the phrase used
20 with respect to the corporate governance provisions of the
21 contracts, not the best practice?

22 A. Yes.

23 Q. Okay. That's your phrase, isn't it?

24 A. Yes.

25 Q. Okay. And that phrase, I take it, indicates that the

1 result of corporate governance issues as they were resolved in
2 the contracts negotiated that are before the Court reflect the
3 outcome of a negotiation, or do what you would between parties
4 that wanted to really have a private company in a public
5 company setting, true?

6 A. Correct.

7 Q. Okay. And the result was that the proposal before the
8 Court gives control and veto power to the investors who are
9 going to get the convertible preferred stock, isn't that true?

10 A. It gives certain control rights to those investors.

11 Q. And you defined that and you said that that was not the
12 best practice in a situation like this to have that result,
13 isn't that what you said?

14 A. I said for -- I said, speaking generally, for public
15 company -- for a public company corporate governance looking at
16 that issue in isolation, not part of a broader, more complex
17 deal, that governance structure does not represent best
18 practices for a public company.

19 Q. Okay. And it's these -- it's this governance structure
20 and the situation it represents not the best practices that you
21 and Delphi are asking the Court to approve today?

22 A. We are -- no. We are asking the Court to approve a
23 framework agreement that balances many issues: financial,
24 governance, settlements with stakeholders and as part of that,
25 we have a corporate governance structure that represents an

1 extensively and hotly negotiated deal. And I think, taken as a
2 whole, it's a deal that the debtor is prepared to support --

3 Q. Cerberus --

4 A. -- and does support.

5 Q. I didn't mean to interrupt, I'm sorry. Cerberus and
6 Appaloosa wanted this control and veto power, isn't that
7 correct?

8 A. Yes.

9 Q. And you acceded to that even though you felt
10 professionally, in your experience, it wasn't the best practice
11 in a public company?

12 A. Because it allowed us to maximize value for our
13 stakeholders --

14 Q. Let's go --

15 A. -- that's correct.

16 Q. I'm sorry. Let's go back to the November, December time
17 frame. When you define the universe of who is really a capable
18 player here to do a deal with Delphi, a capable player was
19 sophisticated, experienced in bankruptcy, had the money,
20 obviously, and was able to deliver an exit by July of 2007,
21 correct?

22 A. Yes.

23 Q. Okay. Once you narrow that universe down to two people,
24 Cerberus and Appaloosa, didn't you basically eliminate your
25 bargaining power and all these tough issues you had to concede

1 on throughout the entire agreement?

2 A. No.

3 Q. Well, with respect -- we just talked about the corporate
4 governance issue. Let's talk about the convertible preferred
5 issue. Okay? We already had some testimony a little bit -- a
6 little while ago about that, that it was one that you hadn't
7 seen before in a case, is that correct?

8 A. I said you do not see that in the public arena for
9 convertible preferred.

10 Q. But it's one that Delphi had to accede to and agree to in
11 order to get the rest of the deal, is that correct?

12 A. Yes. That structure is essentially a structure where
13 there were different uses of value and investment value for new
14 money and a higher plan value for existing stakeholders is not
15 unusual in bankruptcy as a way to bridge valuation gaps. We
16 happen to encapsulate that in a convertible preferred security.
17 That feature in itself is not unusual. But the point I was
18 making before was that you don't see that in a public market.
19 Of course you don't because those are not companies that are
20 coming out of bankruptcy.

21 Q. All these negative pieces of the deal, whether it's the
22 convertible preferred terms or things you haven't seen before,
23 the corporate governance which you say is not the best practice
24 for a company like this, issues with respect to, really, a
25 responsible inability to do three months of due diligence and

1 have a real competitor process, are driven by the fact that
2 you've limited the universe to two people in December and
3 basically boxed out the rest of competitive bidding.

4 MR. BUTLER: Objection, Your Honor. Argumentative
5 and testifying. What is the precedent?

6 THE COURT: Well, why not rephrase that?

7 Q. Do you agree, at least --

8 THE COURT: Or you can rephrase it. What is the
9 effect on maximization of value for the debtors in limiting the
10 universe to which the company was, I guess, affirmatively shot?

11 THE WITNESS: Well, Your Honor, I respectfully
12 disagree with counsel that the universe was limited, number
13 one. We reached out to the statutory committees. When we made
14 the decision to move forward with a small group, GM, UCC,
15 Cerberus, Appaloosa, Harbinger and Ripplewood, we made that
16 decision in consultation with our stakeholders as well as with
17 the board. We had a meeting where we talked about that and we
18 felt that given the concerns over time, the need for the
19 company to emerge in '07, because if it didn't there was
20 significant risk to the value of the estate to get tied up in
21 the fall of '07, the OEM labor negotiations. That that was a
22 very critical issue for this estate that we would go forward
23 with parties that had consistently expressed an interest that
24 were sophisticated and that could move forward and meet our
25 timetable. Other people that approached us that were

1 sophisticated, like one of the parties I mentioned in my
2 deposition, we encouraged to participate. We told them about
3 the timing, we told them we'd work with them, we told them what
4 the issues were so they could come in with their eyes open,
5 where they could partner with one of the existing parties.
6 They declined to do it but we encouraged them to do that. And
7 all the other stakeholders were aware that that other party who
8 was also invested in the capital structure was out there. I
9 think, again, given the issues facing Delphi and the need to
10 emerge, we went through this process with a group that could
11 give us a competitive dynamic and I believe that we did. Now,
12 going forward with a new business plan there, I believe there's
13 the ability for someone else to come in. They'd have to work
14 very hard and not take weeks to try to negotiate an NDA that
15 had been negotiated by several other parties if they really
16 were serious to move forward quickly and to come in and do
17 that. I'm sorry that's a long answer to your question.

18 MR. PARKINS: I think your answer is fine for me. I
19 have no more questions, Your Honor.

20 THE COURT: Well, can I follow up on one thing? It's
21 something Mr. Parkins raised. At some point in this process in
22 the fall, it appears to me, I guess, from reading your
23 declaration, that if the company and the other stakeholders
24 urging Cerberus and Appaloosa teamed up, and you've alluded to,
25 sort of trying to carbonize their two approaches --

1 THE WITNESS: Yes.

2 THE COURT: -- what was the effect on value to the
3 estate of the two bidders teaming up?

4 THE WITNESS: Well, I think, Your Honor, it actually
5 maximized value to the estate because it led to increased
6 certainty in the debtors' view that a consensual Delphi
7 transaction with GM and the UAW could actually be achieved. At
8 that point, we had been working with the Appaloosa proposal and
9 it became clear after the debtor and some of the other
10 stakeholders had embraced that, both committees, frankly, that
11 GM and labor, particularly, UAW, were uncomfortable with that
12 because they weren't familiar with Appaloosa. Appaloosa didn't
13 have automotive experience, didn't have someone on their team
14 that both parties were familiar with so we tried to encourage
15 both Cerberus and Ripplewood to team up with Appaloosa and
16 created a little competitive framework between the two because
17 Appaloosa had a significant blocking position in part of the
18 capital structure. So when Appaloosa and Cerberus ultimately
19 reached agreement, the value of the deal was essentially from
20 total enterprise value the same as the GM/UCC deal and the
21 Appaloosa only deal. But, and this is most important, it
22 provided increased certainty in getting closure because
23 Cerberus was a party that GM and the UAW were comfortable with.
24 So we knew we could come to them and negotiate the two
25 remaining issues in this case, which were the union issues, as

1 you heard this morning, and then the open issues we have with
2 General Motors. So that increased -- the TEV was the same
3 across the proposal but the increased certainty of getting to
4 closure was what I would say maximized value to the estate.
5 Because without it, we'd have a deal on paper but we'd never
6 have a deal in reality.

7 MR. PARKINS: I'm done, Your Honor. Thank you.

8 THE COURT: Okay.

9 REDIRECT EXAMINATION BY

10 MR. BUTLER:

11 Q. Mr. Resnick, will you look back at Exhibit 20 and 21 --
12 one moment.

13 A. Yes.

14 Q. Do you have personal knowledge as to whether these two
15 documents were presented at the November 14th board of
16 directors meeting?

17 A. Yes. They were presented together.

18 Q. And did you participate in that presentation?

19 A. Yes.

20 Q. Did you play a role in preparing those two documents?

21 A. Yes.

22 Q. Do you, Mr. Resnick, have a view as to whether or not
23 Delphi can or should subject itself to sort of an ordinary
24 auction?

25 A. Yes, I have a view.

1 Q. And what is your view?

2 A. I think the circumstances of the Delphi restructuring are
3 such that it would be inappropriate for the debtor to follow
4 such a process in this particular case.

5 Q. And why is that?

6 A. Because this case is much more complex. It has a large
7 number of parties in interest with significant issues that have
8 to be negotiated, particularly, issues surrounding a settlement
9 with General Motors and General Motors's contribution to the
10 plan with the numerous labor unions involved with the company
11 and settlements with them. So just having an auction over
12 value is not going to solve this case. It's not like the
13 typical restructuring where there's a dispute over value and
14 you just put the company up for bid. If there's not a plan
15 investor here with whom GM and the unions feel they want to
16 negotiate with, we're never going to get across the finish
17 line. And we've -- we've run that play before when we tried to
18 move forward with the Appaloosa only proposal. This process is
19 going to have to be conducted in a much more negotiated way.

20 Q. Do you spend time -- do GM and the UAW have financial
21 advisors?

22 A. Yes.

23 Q. Do you spend time speaking with them?

24 A. Yes, I do.

25 Q. Substantial amount of time or just on occasion?

1 A. Substantial amount of time.

2 Q. From those discussions, have you developed any
3 understanding --

4 A. And I'd add -- I'm sorry, Mr. Butler. The IUE has its own
5 investment banker as well.

6 Q. From those discussions, have you developed any
7 understanding about how you would assess the ability to
8 negotiate transactions with those unions and General Motors in
9 the face of what I'll call public auction?

10 A. I think there would be no negotiation.

11 Q. And why do you say that?

12 A. Because it's been demonstrated to the debtors and its
13 advisors time and time again that these parties are willing to
14 negotiate it -- I'm sorry, are willing to negotiate resolution
15 of their remaining issues but they would like to know with whom
16 they are negotiating. Until there's clarity on that, we can
17 discuss certain issues, and we've made some progress on that,
18 but the critical and most significant ones without resolving,
19 Delphi will never get out of bankruptcy, we cannot address.

20 Q. Mr. Resnick, do you have a view as to whether a plan
21 investor who brings "just money" to the table is capable of
22 executing the transaction that's necessary for this company to
23 reorganize in Chapter 11?

24 A. I have a view on that, yes.

25 Q. And what is your view?

1 A. My view is that unfortunately it's not possible. We've
2 tried that with the Appaloosa/Harbinger proposal back in the
3 September time frame and we were rebuffed in pursuing that and
4 that's why we went back and had discussions with Cerberus and
5 Ripplewood to try and team up with -- with Appaloosa because
6 that we felt was the key piece of solving this complex puzzle
7 of resolving the remaining issues with GM and the UAW to find a
8 partner with the financial investor that -- the GM and the UAW
9 were comfortable with.

10 Q. During the course of the framework discussions, did you
11 have an opportunity on behalf of the company to receive
12 indications of value from more than one group or bidder?

13 A. Yes.

14 Q. How many different indications of value did you receive?

15 A. We received from GM and the UCC and their advisors, from
16 Appaloosa/Harbinger and its advisors, from Cerberus and from
17 Ripplewood.

18 Q. And were those proposals and indications of value arrived
19 at, so far as you know, independently of each other?

20 A. Yes.

21 Q. Without going into the exact dollar amount of those on
22 this public record, I'll ask you were there any material
23 differences in the range of value between those four different
24 groups in terms of total enterprise value anticipated from the
25 company?

1 A. In terms of -- in terms of total enterprise value, they
2 were fairly consistent.

3 Q. How about in terms of the leverage the company could
4 withstand as it emerged from Chapter 11?

5 A. Ultimately, after a little negotiation, they were fairly
6 consistent but they started in a range that I would say was not
7 very far from one another.

8 Q. Do those indications of value all assume the company would
9 achieve some -- an estimated level of EBITDA at some point in
10 its post-restructured state?

11 A. Yes.

12 Q. And -- and I think this number is public, what is that
13 range of EBITDA that the parties were focused on?

14 A. Two point four billion of EBITDA in 2009.

15 Q. Do you have a view as to whether or not the debtors can
16 achieve that objective without comprehensive restructured
17 transactions with labor and General Motors?

18 A. Yes, I have a view.

19 Q. And what is your view?

20 A. It's essential that the debtor have agreements with GM and
21 its unions to achieve the 2.4 billion dollar EBITDA number.

22 Q. And if either of those groups is not prepared to enter
23 into such transactions, do you have a view as to the debtors'
24 prospects for reorganization?

25 A. I think they will be much more challenging. We're going

1 to have to go back to the drawing board.

2 Q. Do you have a view as to the sustainability of that EBITDA
3 range? Would it be the same? Could it be achieved?

4 A. Oh, the -- no. My -- my point would be that the EBITDA
5 number would be significantly less and the company would have
6 to dramatically rethink its business because the business model
7 is built on new agreements with General Motors and with its
8 unions. And a footprint, in terms of facilities that it would
9 operate, that would have to be negotiated with General Motors
10 and its unions.

11 Q. Mr. Resnick, do you have an understanding --

12 MR. BUTLER: Strike that.

13 Q. You testified earlier that the company was striving to
14 emerge from Chapter 11 before the 2007 national contract
15 negotiations involved OEMs, is that right?

16 A. That's right.

17 Q. Do you have an understanding of why that issue is viewed
18 in that way by the company?

19 A. Yes, because at that time the UAW will focus on
20 negotiating its agreements with the Big Three, and that will
21 take their primary focus, and if Delphi has not addressed its
22 issues with its unions before then, it's very likely that
23 Delphi will not be able to address its issues until after that
24 time which would mean the company would continue in Chapter 11.
25 It would lead to greater uncertainty because the company's

1 customers which have been focused on an earlier emergence
2 before national bargaining begins have been, in some cases,
3 holding off business awards until it sees that Delphi would
4 emerge --

5 MR. PARKINS: Objection, Your Honor. That's hearsay.
6 He doesn't have personal knowledge of that. Move to strike.

7 THE COURT: Sustained.

8 A. So it will be much more challenging for the company if it
9 does not emerge prior to the beginning of national bargaining.

10 Q. Do you have a view as to the relative importance or
11 unimportance of the GM benefit guarantee in the company's
12 restructuring negotiations?

13 A. Yes.

14 Q. And what is your view?

15 A. The benefit guarantee is very important. It's very
16 important to the unions and that is an issue in the national
17 bargaining. And I think the unions would like that -- the
18 issue of the benefit guarantee resolved beforehand as part of
19 Delphi's restructuring.

20 Q. Why is the benefit guarantee important?

21 A. Because Delphi's labor agreements expire in '07 as well
22 and the benefit guarantee would theoretically expire.

23 Q. But if the benefit guarantee expires, why would that have
24 any kind of material impact on the restructuring of this
25 company?

1 A. Well, it's very important because under the terms of this
2 agreement, General Motors is taking on the OPEB obligation, and
3 that's one of the items to which the benefit guarantee applies.

4 Q. If the debtors are unable to pursue a transformation plan
5 that causes it to emerge by September of 2007, do you have a
6 view of what's likely to happen in the third quarter when these
7 contracts expire and the benefit guarantee expires?

8 A. I think there will be a great deal of uncertainty
9 surrounding what happens with Delphi and its business and the
10 stability the company has been able to achieve by working very
11 hard these past several months to find a consensual
12 reorganization in this very complex case with all its
13 stakeholders is -- will have dissipated and the company will be
14 facing tremendous uncertainty.

15 Q. As an investment banker, Mr. Resnick, do you have a view
16 of what disruption and uncertainty does to value?

17 A. Yes, I do.

18 Q. And what is that view?

19 A. My view is that disruption and uncertainty is extremely
20 harmful to value and that risk that you described is a very
21 significant one and one that the board and management is very
22 aware of in making the decisions they've made with respect to
23 these agreements.

24 MR. BUTLER: No further questions, Your Honor.

25 THE COURT: Before you go, Ms. Steingart, I think,

1 focused you in on a provision of the PSA that lets the plan
2 investors -- this goes on the plan investors -- gives them the
3 right to walk from the PSA after April 1st and before a
4 disclosure statement's approved. And I think she also pointed
5 you to Section 12 of the -- 12(c) of the investment commitment
6 agreement that provides a termination right if the PSA is
7 terminated. Now, I gather that the company views these
8 agreements, particularly by the plan investors, as a, in
9 essence, getting someone to take key initial steps to let
10 everything else come into place. Is that right?

11 THE WITNESS: Yes, Your Honor.

12 THE COURT: As if you were hiring a key contractor to
13 help you build your house.

14 THE WITNESS: Yes.

15 THE COURT: Those provisions, as Mr. Steingart took
16 you through them, though, seem to permit the plan investors,
17 after you've gotten the house half built and perhaps even after
18 GM and the unions have reached the agreements that you're
19 seeking, to say well, I'm going to stop building now.
20 Particularly having heard -- and I'm sure this is no surprise
21 to them, but having heard the company's concerns about timing,
22 why aren't you concerned that at that point the plan investors
23 would say well, we have you under a barrel and, you know, we
24 want to renegotiate.

25 THE WITNESS: Well, this -- this issue is a very

1 difficult one in the agreement, this specific provision. And,
2 I guess, from a practical perspective, if these agreements with
3 GM and the UAW are reached, I think that everyone sees that as
4 the most critical issue, the -- kind of major final hurdle to a
5 Delphi reorganization and at that time the likelihood is if you
6 can reach those agreements, you will be able to consummate your
7 reorganization. So, the probability that having reached that
8 agreement, the plan investors would terminate is a risk, but a
9 reasonable risk, that they would have met their diligence
10 requirements and they would sign off on the agreement with GM
11 and the UAW. Why wouldn't they go forward with the -- with the
12 plan? That's the last piece of the puzzle. So, I understand
13 the point she was making, but I think from a practical
14 perspective, having been involved in trying to bring this to
15 the finish line, that the likelihood that the parties at that
16 point wouldn't go forward while theoretically a risk
17 practically we felt was one, again, having negotiated a whole
18 range of points, not getting everything we wanted, that we
19 would take.

20 THE COURT: Okay. Any recross?

21 RECROSS-EXAMINATION BY

22 MS. STEINGART:

23 Q. Now, isn't it true, Mr. Resnick, that during these
24 meetings at Skadden that both you and Mr. Shaw led the
25 stakeholders to believe that permitting Appaloosa and Cerberus

1 to combine and make a bid would lead to a stalking horse for
2 competitive bidding? Isn't that what you said?

3 A. I don't remember if that's what I said but I believe that
4 selecting the Appaloosa/Cerberus group would provide the estate
5 with a stalking horse.

6 Q. And wasn't part of the discussions that the committee
7 should tolerate that and the committee should support that
8 because each committee had fiduciary duties that would permit
9 them to encourage and review and have additional expressions of
10 interest once whatever Cerberus and Appaloosa were doing was on
11 the table and was in public? Wasn't that a representation that
12 was made to the stakeholders?

13 A. Can you tell me the meeting at which you're referring?

14 Q. At each of the meetings and especially the meetings that
15 led to the combination of Cerberus and Appaloosa.

16 A. I think we -- we had the view that we were running a very
17 competitive process and that at the end of that process we
18 would select a party. It would give us a stalking horse. It
19 would give us a bird in the hand. And then each of the debtor
20 and the statutory committees had fiduciary obligations. If
21 there were higher proposals, we'd have the ability to review
22 them and compare them.

23 Q. That's not what I said and that's not what I'm asking you
24 whether you and Mr. Shaw said. What you and Mr. Shaw said was
25 that this narrowing at an earlier stage than might otherwise

1 occur and this development of a proposal would have a positive
2 impact and would be used, not tolerated, not given some
3 fiduciary duty at minimum, minimum, minimum of any requirement
4 you could do but still wanting to be within the Code. I'm not
5 saying that anyone was proposing to breach those duties. But
6 that's not what was said. It was said that this would be used
7 affirmatively. Affirmatively in a way that would bring other
8 people in and that would give the committees an opportunity to
9 make sure that that process led to a widening in a responsible
10 way but not in end gain. And if you don't recall that tell me
11 that you don't recall that.

12 A. Yeah, I don't recall those specific words that you're
13 trying to put in my mouth.

14 Q. All right. But I have a good faith belief for asking the
15 question, Mr. Resnick, I can assure you.

16 A. I'm sure you do.

17 Q. You said it was possible for other people to come in and
18 that they would have to work very hard because they weren't
19 going to have the three and a half months that counsel was
20 talking to you about. Wouldn't that process in that working
21 very hard be easier if the debtors had a structure?

22 A. We've been through this before. I think the debtor in the
23 AHC proposal has a very clear structure. And if you look at
24 the Highland letter --

25 Q. But you didn't have a structure for people to come in.

1 A. -- we followed that structure.

2 Q. You don't have a structure for people to come in.

3 MR. BUTLER: Objection. Objection. Can you please
4 let him answer the question?

5 THE COURT: We're going over the same points.

6 MS. STEINGART: Your Honor, okay.

7 Q. But you don't have a structure for people to come in, do
8 you?

9 A. We have a framework agreement. A framework means a frame,
10 a structure.

11 THE COURT: No. She's talking about a bidding
12 procedure structure.

13 A. A bidding? No. We do not -- this is not a 363 sale. We
14 don't have a bidding procedures order attached to our motion.

15 Q. And indeed, there are ways to sort of solicit interest.
16 And you're a sophisticated guy. I mean, I don't have to lead
17 you by the hand here. You don't need to have an auction. You
18 don't need to have a free for all. There are ways to structure
19 it, to screen people, to be discrete in time, to be discrete in
20 scope, but to make sure that you're getting the interest here
21 that it's possible to get. You can structure such a thing,
22 couldn't you, Mr. Resnick, if you tried hard?

23 A. I'm sure I -- I'm sure I could.

24 Q. And the potential people that you would look for wouldn't
25 have to be just money people. There are people out there with

1 more than just money, right?

2 A. Yes.

3 Q. Okay. And you could eliminate the ones that you wanted to
4 eliminate. Now, let's move on to indications of value. Isn't
5 it true that once the initial proposal was made all the other
6 constituencies used that number to structure their proposals?
7 The equity committee didn't do three months of due diligence,
8 did it?

9 A. I know they did diligence. I don't know exactly how much.

10 Q. We didn't have a financial advisor, Mr. Resnick. You know
11 that.

12 A. You had a financial advisor at a particular point in time
13 and that financial advisor did do due diligence.

14 Q. Right. But not in August, right? Not until you were well
15 into these discussions, isn't that fair?

16 A. I don't know their schedule of due diligence.

17 Q. And what happened was that the range that's in -- that
18 this proposal is premised on was one that was provided and
19 everyone structured proposals that were in that parameter, that
20 had a certain value per share and that had a certain debt load
21 to show the debtor different ways in which capital structure
22 could deliver value to stakeholders assuming that the values
23 provided were reasonable.

24 THE COURT: I'm sorry. I -- what time are we --

25 MS. STEINGART: I said there was an overall value --

1 this was during August, Your Honor.

2 THE COURT: Okay.

3 Q. Okay. There was an overall value that emerged from the
4 initial proposals at Ripplewood and Cerberus, right?

5 A. Not in August, no. Wrong.

6 Q. In the fall, correct?

7 A. Later in the fall.

8 Q. And they jelled on the same general value, the same range,
9 correct?

10 A. No, not correct.

11 Q. What? It was a million dollars, a billion dollars apart,
12 twelve to thirteen or fourteen, twelve to thirteen?

13 A. Well, I wouldn't say a billion is an insignificant number.
14 But the facts are that the GM --

15 Q. Well, it's ten percent -- sir, it's ten percent, right?

16 A. The GM/UCC proposal used a number. Other people did look
17 at that number but the bids that came in, in particular from
18 Cerberus, were below that number and there were significant
19 negotiation back and forth to push them higher which, I
20 believe, was the debtors' job and ultimately, they did approach
21 the number used by GM and the UCC. Why was that? Because,
22 particularly with the UCC, they and their advisors were very
23 insistent with respect to recoveries and values and to be part
24 of a consensual deal the plan investors had to move up their
25 number to get their support. They did a very good job for

1 their clients.

2 Q. Right. Right. So maybe one or two participants did due
3 diligence but the others jelled around a number that was
4 provided and offered the debtor different kinds of capital
5 structures in which that number would represent different kinds
6 of distributions to stakeholders. Isn't that the way it
7 happened?

8 MR. BUTLER: Objection. That was not the prior
9 testimony. Mr. Resnick testified he got four --

10 THE COURT: No. He --

11 MS. STEINGART: I am suggesting to him what happened
12 and he can tell me if he disagrees.

13 THE COURT: Overruled on that basis.

14 MS. STEINGART: Sorry, Your Honor. I apologize.

15 THE COURT: So, can you rephrase the question --

16 MS. STEINGART: Okay.

17 THE COURT: -- or restate the question?

18 Q. Isn't it the fact that stakeholders adopted a value that
19 was being used by Cerberus and Ripplewood and presented varying
20 scenarios of a transaction with different capital structures
21 assuming that value?

22 A. No. It is absolutely not the fact.

23 Q. Well, the equity committee never arrived at its own value,
24 did it?

25 A. The equity committee did have its own views of value.

1 Q. Now, we were having -- you were having a discussion with
2 the judge about a house and whether people would walk away in
3 the middle of building that house. And that you had comfort
4 that the plan investors wouldn't walk away, right? Correct?

5 A. I said it was a risk but one that the company decided was
6 worth taking.

7 Q. Right. And, in fact, you're comfortable that the plan,
8 investors won't walk away because the forty-five dollar plan
9 value for stock is really very low, right?

10 A. No.

11 Q. All right. And isn't it a fact that when the disclosure
12 statement is filed and when the agreements with the unions and
13 with GM are made they're going to find that their ten dollars
14 of implied value on the discount is substantially higher, isn't
15 that right?

16 A. No. The forty-five dollars is a 5.9 multiple of 2009
17 EBITDA for this company, which is, if you look at where other
18 publicly traded automotive suppliers trade, it's at the high
19 end of that range.

20 Q. Indeed, the only way that you can expect the plan
21 investors not to exercise that out, because we assume that they
22 are all commercially rational beings, is that if the value --
23 is that the value of those discounts are maintained, correct?

24 A. I'm not sure I understand the question.

25 Q. Is there any reason for the plan investors not to walk

1 away if the values that are implied by their discounted
2 consideration here are not realized?

3 A. I think the plan investors had taken a long term view of
4 the company and believed that the price at which they were
5 investing in their convertible preferred is a reasonable price.
6 I think the other stakeholders, particular the unsecured
7 creditors, agree with that and that the imputed price, the
8 forty-five dollars for the plan, is one that may or may not be
9 realized at the time of consummation. It may not -- the market
10 may not reflect that.

11 Q. Right. But knowing what the investors will know at the
12 time the disclosure statement is approved makes it much more
13 likely that any assumption that's made about plan value stock
14 at the time of confirmation is much less risky, right?

15 A. I think if the plan investors feel they can get a return
16 on their investment at the price at which they're investing
17 then it's an attractive deal for them. It doesn't have to be
18 forty-five dollars immediately at the time of consummation.

19 MS. STEINGART: I have no further questions, Your
20 Honor.

21 THE COURT: Okay.

22 MR. BUTLER: I have no further questions.

23 THE COURT: All right. You can step down, Mr.
24 Resnick.

25 THE WITNESS: Thank you, Your Honor.

1 MR. BUTLER: Your Honor, subject to the agreement
2 that was reached by counsel that we announced earlier in the
3 hearing that my redirect of Mr. Miller does not connect and in
4 fact be expanded to cover the board meeting and other matters,
5 it doesn't have to be limited to the cross. We have nothing
6 further and would turn the podium to Ms. Steingart and to Mr.
7 Parkins to present their witnesses.

8 THE COURT: Okay. That's fine.

9 MS. STEINGART: Well, Your Honor, before I would
10 begin and take more of the Court's time, I would ask that in
11 light of the evidence that's been presented, in light of the
12 substantial issues with respect to the continued illusory
13 nature of the contracts, the massive unconscionable fees, the
14 lack of even a minimum process to permit interested responsible
15 parties to come in and do quick, meaningful due diligence and
16 make other offers, that those infirmities, I think, make it
17 impossible for the Court to approve these agreements in their
18 current form, and that some kind of thirty-day window or
19 something else is required. And I would ask if that's the
20 case, Your Honor, that we don't have to continue to take up the
21 Court's time and the witnesses' time but I don't think that the
22 debtor has made the case for approval of these agreements. So
23 I would ask that if that's the Court's view that we can stop
24 now.

25 THE COURT: No. It's not my view.

1 MS. STEINGART: Okay. Then we would call Mr. Miller.

2 MR. BUTLER: We have to go get Mr. Miller.

3 THE COURT: All right. Do people want a five-minute

4 break?

5 MR. BUTLER: I'd love one now.

6 THE COURT: Okay. All right. So I'll be back about

7 twenty-five of 5.

8 (Recess from 4:27 p.m. until 4:38 p.m.)

9 THE COURT: Please be seated. Okay. We're back on

10 the record with Delphi Corporation. Would you raise your right

11 hand, please?

12 (Witness is sworn)

13 THE COURT: Just for the record, would you state and

14 spell your name?

15 THE WITNESS: Yes. My name is Robert S. Miller and I

16 am the executive chairman of Delphi Corporation, effective

17 January 1st. And prior to that I was chairman and chief

18 executive officer.

19 THE COURT: Okay.

20 CROSS-EXAMINATION BY

21 MS. STEINGART:

22 Q. Good afternoon, Mr. Miller.

23 A. Good afternoon. I was hoping after your opening remarks

24 you'd let me off the hook, but I guess not, huh?

25 Q. I wish it were up to me. I'd like to take you back to the

1 December 11 meeting of the board of the directors of Delphi.
2 That meeting was telephonic, wasn't it? And if you'd like to
3 refresh your recollection of that I can refer you to Exhibit
4 JT-42, which is the binders there.

5 A. Yes, that is correct. Thank you.

6 Q. So each of the board members was in a different place with
7 whatever materials had been provided by advisors and company
8 management, correct?

9 A. That is correct.

10 Q. And Mr. Opie testified that he didn't believe the board
11 members, because of the length and complexity, were really
12 expected to read the investment agreement but would instead
13 have descriptions from advisors. Was that your understanding
14 of what most of the directors did?

15 A. Our objective was to provide each of the directors with as
16 many materials as we could. We had approximately thirty-seven
17 meetings during last year. They were apprised at all steps
18 along the way through the very lengthy negotiations, and so
19 they had both materials in hand that they would have seen
20 before, not the final document, but would have been well
21 educated by the time they got to the final meeting. And,
22 therefore, if they did not actually read in detail, the
23 documents, they certainly had the ability to understand and I
24 think a reasonable ability to rely on advice from the
25 professionals.

1 Q. And that was true of you as well, correct?

2 A. Well, I would -- in my role, having been personally
3 involved in many of the negotiations, I would guess I had read
4 more materials and was a bit deeper into it than the average
5 independent director. But I did not necessarily read every
6 legal document myself.

7 Q. Right. And before that meeting on December 11 there
8 wasn't even a full version of the investment agreement
9 available for you to read, correct?

10 A. I do not recall.

11 Q. And you testified at your deposition that you don't recall
12 having read the agreement prior to the December 11 meeting,
13 correct?

14 A. I believe that's correct.

15 Q. So instead of reading them the directors relied on
16 management and advisors of those who were not as involved
17 firsthand as you were, sir, to summarize and explain them,
18 correct?

19 A. Correct.

20 Q. And with respect to Rothschild, after the November
21 meetings or the November 14th meetings, there were not written
22 summaries of the material provided by Rothschild, were there?

23 A. I don't recall.

24 Q. But at the meeting there was a discussion of the
25 investment agreement and there was a summary that was provided

1 by Skadden Arps, right?

2 THE COURT: This is December 11th still?

3 MS. STEINGART: The December 11th meeting, Your
4 Honor.

5 A. I believe that's correct.

6 Q. And you've characterized this transaction as complex with
7 moving parts, correct?

8 A. Correct.

9 Q. And it's fair to say that part of the complexity is the
10 existence of multiple agreements which interact with one
11 another in various ways, wouldn't you agree?

12 A. Yes.

13 Q. Now, if we could look together at JT Exhibit 30, which has
14 been identified as the summary that Skadden provided of the
15 investment agreement at the December 11 meeting. Do you have
16 that in front of you?

17 A. Yes, I do.

18 Q. Okay. Now, you weren't provided with a comparable summary
19 of the plan support agreement, were you?

20 A. Well, I don't recall exactly what I was provided with at
21 each step along the way. I was involved day after day after
22 day in these negotiations but I cannot recall exactly which
23 document I was provided with or looked at immediately prior to
24 the meeting.

25 Q. Do you recall whether the board, in general, at that

1 meeting and not you individually, but most of your prior
2 involvement, but the board in general, at that meeting was
3 provided with a summary of the PSA?

4 A. I do not recall which documents they got at which moment
5 in time.

6 Q. Do you recall there being a summary of the plan support
7 agreement?

8 A. I honestly don't recall.

9 Q. Okay, that's fair. Do you recall there being any material
10 provided at the meeting on December 11th which explained the
11 interaction of the plan support agreement and the investment
12 agreement?

13 A. I'm trying to be helpful in responding to your questions.
14 The directors, I would say, approached their duties very
15 seriously. Different directors had different amounts of time
16 to devote to this, ability to read and digest the documents
17 different, capabilities to understand legally -- legal
18 documents. They all had the ability to understand business
19 principles. And both the Skadden team and the Rothschild team
20 and our own negotiating team fully explained what were the
21 critical business issues involved, the views of the committees
22 and so on leading up to the formulation of what they were being
23 asked to approved. But what I cannot recall is precisely what
24 document they may -- each individual may have read and, you
25 know, at what point they got it.

1 Q. And at this point, we're not trying to fault the board for
2 not having spent a lot of time, that's not -- the thrust of my
3 inquiry is how much information the board had of an analytic
4 nature. And so my question is whether you recall a summary
5 being prepared and discussed by either Skadden or Rothschild
6 that said these are a handful of agreements and they have
7 meaning separately. But when you put them together, there are
8 results that one might not expect if you look at them
9 individually. Was anything of that nature provided on December
10 11th?

11 A. I do not recall. Personally, I get several thousand pages
12 a month in going through these negotiations. And I personally
13 cannot recall which page went with what, which went to which
14 board at what date, and that's my struggle in answering your
15 question. But what I can tell you was that the board was
16 advised of what the sensitivities were from the viewpoint of
17 the statutory committees and other stakeholders and dealt with
18 it in its totality, but looking at the business issues that had
19 been raised by the various parties.

20 Q. Well, if we look at Exhibit 30, if you could look at pages
21 4 and 5. And at determination provision described on page 4
22 to 5?

23 A. Yes.

24 Q. Now it's true, is it not, that it doesn't mention anywhere
25 there that plan investors can terminate the investment

1 agreement if the plan support agreement has been terminated,
2 correct?

3 A. Yes, it so says.

4 Q. It doesn't say?

5 A. I'm sorry. Okay, it doesn't say.

6 MR. BUTLER: Your Honor, I'm just going to raise a
7 question that you made a chambers ruling --

8 THE COURT: If this is just going to elicit the same
9 testimony that Mr. Sheehan gave us, that's not why we had Mr.
10 Miller come here.

11 MS. STEINGART: Right. I'm just trying to --

12 THE COURT: If you're setting up another question,
13 that's fine.

14 MS. STEINGART: Oh, yes, I am, Your Honor.

15 THE COURT: All right. That is cumulative of Mr.
16 Sheehan's testimony?

17 Q. And even after yesterday's fixes, even after the changes
18 made to the agreement yesterday that was filed in court, the
19 plan investors can still terminate the agreement for any reason
20 or no reason as far as you understand, correct?

21 A. My understanding is that if the plan investors go through
22 the process we are embarking on and conclude that this not an
23 appropriate investment for them, yes, they are able to get out
24 and we will have incurred significant expenses during that
25 time.

1 Q. Right. But yesterday the window opened up to that was
2 limited?

3 A. Yes.

4 Q. But even after yesterday's fixes, GM can still terminate
5 the PSA at any time for any reason or no reason at all,
6 correct?

7 A. That is correct. We tried very hard to get a firmer
8 commitment from GM. They were unwilling to commit to anything
9 until the entire picture was in focus. We're in the midst of a
10 negotiation that we hope to conclude, that is part of the
11 understanding in this framework agreement. But I do not
12 challenge your assertion that they are able to not proceed if
13 they so choose.

14 Q. Right. And their period of optionality has been limited.
15 I'd like to direction your attention -- if you could keep 30
16 there but also if you could look at JT Exhibit 33?

17 A. Okay.

18 Q. And this was a document that stated as of December 11 --
19 in reviewing it -- does looking at it refresh your recollection
20 that the board, in fact, had this on that day?

21 A. No.

22 Q. All right. Fair enough. But that's day when the board
23 authorized management to go forward and seek board approval to
24 these agreements, right?

25 A. Yes.

1 Q. If you could turn to page 3 of that agreement, of 33?

2 A. 3?

3 Q. Yeah, page 3. And do you see the top box, it says number
4 4?

5 A. Yes.

6 Q. And were these kind of summaries prepared for you from
7 time to time? I mean, this is the kind of thing that you saw
8 that updated the committee on -- updated the board on where the
9 negotiations were?

10 A. Yes.

11 Q. And these were prepared by Skadden or by management?

12 A. In most cases it was a collaborative effort. Ultimately
13 the work product would have been produced by Skadden.

14 Q. Okay. And if we could just run across number 4 on the top
15 of page 3 there, if you could go to the third box, and the
16 third bullet, fourth down. And if I could read it, it says
17 "plan investors have agreed to be irrevocably bound once they
18 approve the GM settlement." Do you see that?

19 A. Yes.

20 Q. Okay. Now that wasn't true before the modifications
21 yesterday, right?

22 A. I don't recall.

23 Q. And, sir, that's not correct even now, is it?

24 A. I don't know.

25 Q. Okay. But that's what, if you give credence to the date

1 on the front of the document, the board had at the time these
2 discussions occurred on December 11, correct?

3 A. Well, I do not recall all the documentation they may have
4 had.

5 Q. Let's talk a little bit about what Rothschild did and
6 didn't do. You got these presentations from time to time on
7 open issues in the negotiation, correct?

8 A. Yes.

9 Q. But Rothschild didn't prepare them for you?

10 A. Well, at times Rothschild prepared documents, at times
11 Skadden prepared documents, at times our own internal
12 negotiating team prepared documents. And I can't recall from
13 day to day which documents were fallen through.

14 Q. Did Rothschild ever prepare a sort of summary list of best
15 case/worst case scenario with respect to these framework
16 agreements to the board?

17 A. I don't recall specifically. I'm sure either in their
18 oral presentations or perhaps in written presentations they
19 would have discussed such things.

20 Q. Okay. But as you sit here today, there's no particular
21 presentation that you recall towards the end of the process
22 where they said, you know, if we get into these sets of
23 agreements, you know, these are the kinds of real worst
24 problems we could have?

25 A. I don't specifically recall. We had endless discussions

1 about what could go wrong in this process and debating the
2 merits of whether to proceed.

3 Q. Now, you recognize that the plan investors aren't bound
4 during the period that they can walk away -- by virtue of your
5 last answer, it's clear that you appreciate that and that
6 there's special risk that is associated with that, correct?

7 A. Yes.

8 Q. But yet there was not a particular list of issues that --
9 or list of problems that are related to investors walking away
10 or having that ability that was provided by the board, even
11 with respect to that narrow issue?

12 A. I would just say it was a bedrock principle, very clear to
13 the board that by engaging in this agreement that the estate
14 would be exposed to the possibility that we would have made
15 considerable expenditures to the plan investors and ultimately
16 not have a complete deal. That was clearly understood that
17 there were risks to proceeding. And they weighed that against
18 the risks of not proceeding. And came to a balanced judgment
19 that the estate and all of its stakeholders were better off
20 proceeding than not proceeding.

21 Q. Well, let's look at those risks in terms of -- or rewards
22 in terms of value that was created in these sets of agreements
23 for the plan investors. We've used this chart before, this
24 morning, Mr. Miller --

25 THE COURT: Does he have a copy of it?

1 THE WITNESS: Does.

2 THE COURT: Okay.

3 THE WITNESS: Thank you.

4 Q. There's a separate chart that we've prepared concerning
5 the value transfer to claim investors. Now, the board prepared
6 it, they were up to thirteen million dollars in expenses that
7 would go to plan investors immediately upon approval, correct?

8 A. Correct.

9 Q. And that there was an addition five million that would go
10 to Appaloosa on the effective date. And also expenses all
11 throughout were going to paid, correct?

12 A. That is correct.

13 Q. And we've estimated that -- I heard this morning that
14 there were five different investors who you stayed with you're
15 paying these fees for, correct?

16 MR. BUTLER: Objection. I'm trying to figure out
17 what's not cumulative of the earlier testimony on this subject.

18 MS. STEINGART: I'm going to try to have a sense of
19 what the board discussion was on --

20 MR. BUTLER: But Mr. Sheehan participated and she
21 cross-examined him about what went on at the board meetings.

22 THE COURT: It is kind of deja vu all over again. I
23 mean, I --

24 MR. STEINGART: Well, let me get to finish the --

25 THE WITNESS: Okay.

1 Q. Well, during December 11, or as time close before that,
2 did the board understand that there was in terms of the fees
3 expenses and implied valued discounts on the rights offering
4 and the preferred stock, that the value transfer could amount
5 to 500 million dollars to the plan investors?

6 A. I do not specifically recall a number of 500 million being
7 represented as the possible total benefit to the plan investors
8 if everything worked well. That number does not surprise or
9 shock me. I sincerely hope that if we proceed on this deal
10 that they do make a lot of money because it would mean that
11 Delphi would have been a great success. And whether or not we
12 might have wished that they would have done this cheaper, that
13 was not an option that we were facing. We had the choice to
14 accept what they had proposed after several months of heavy
15 negotiation, and where they said that's it, this is what we
16 want you to either take or reject. We concluded that
17 proceeding on that basis was preferable to not having a deal.
18 And we weighed all the risks of failure to conclude this. We
19 weighed the fact that they might make a lot of money. But
20 nonetheless, their capital investment willing to invest, which
21 was superior to anyone else on the screen at that time, was the
22 enabler for this company to find its way out of Chapter 11.
23 Q. And if the company is doing as well, as you hope it will,
24 and be as each of the stakeholders, if it will, that number
25 could be even higher. And that's something that the board

1 understood because of the discount to those stocks, right?

2 A. Yes.

3 Q. And did the board discuss that within the convertible
4 preferred because it has a feature that permits it to be
5 converted into common all during the time that the convertible
6 preferred is outstanding, that it had an optionality value that
7 enhanced what the market would view its value?

8 A. I believe every one of my directors is sufficiently
9 financially sophisticated to understand that the convertible
10 preferred has optionality value. That it's got some protection
11 on the downside, yet the ability to participate fully on the
12 upside.

13 Q. So with all due respect, the question I guess I have is
14 that if this 3.3 million and about twenty million of expenses
15 which would be 363 million represents the amount the company
16 paid to get 1.2 billion dollars because that's what's being
17 generated on the preferred. Just like paying thirty-three
18 cents to get fifty cents or sixty-six cents. But wouldn't
19 there be a point that -- what would then bring it forth; would
20 fifty cents have moved the board to say the package on this
21 convertible preferred is just not something that we could do?
22 What number would have, you know, sort of made people say that
23 and say that's not just something we could do.

24 A. I do not recall any particular discussion about -- we did
25 not spend much of any time saying how much would have been too

1 much. We instead focused on this transaction in the best
2 interest of all of our stakeholders versus not proceeding with
3 this transaction. We also took into account that while they
4 might make a lot of money for a relatively smaller capital
5 investment if everything went well and the common shareholders
6 took the rights offering. We also bore in mind that if after
7 the point of commitment things didn't go so well and they ended
8 up having to actually implement the backstop, they might be
9 required to make it a much larger investment while at the same
10 time looking at a much smaller return. And that has happened
11 in other backstop situations.

12 Q. But on December 11, when that was the case, the investors
13 had the right to walk away a day before the effective date?

14 A. I understand.

15 Q. So they didn't have any backstops, did they?

16 A. At that moment, no. We did not consider -- we did not
17 spend a lot of time considering what we would like to have as
18 the terms of the offer. We asked the board to consider the
19 offer on the table. After heavy negotiations, where we had
20 expended enormous effort to take into account the concerns of
21 the various stakeholders and statutory committees. We had
22 endless late night meetings. We arranged one on ones between
23 the plan investors and this committee and that committee.
24 There were enormous changes that were taken to the initial
25 proposals. This is what we ended up with; this is what we were

1 asked to vote on, yes or no.

2 MS. STEINGART: And I would add for the record, Your
3 Honor, it's not the position of our committee that Mr. Miller
4 has ever been anything other than always available and always
5 receptive. So to the extent that anyone is implying that there
6 might be anything undercurrent, that's not at all the case.

7 THE WITNESS: Thank you.

8 MS. STEINGART: Thank you.

9 Q. Now, you talked about getting to where the board was on
10 December 11 and having to sort of make this cut about whether
11 this was better than nothing. And we talked with Mr. Resnick a
12 little bit about those sessions we all had in the fall where
13 Cerberus and Appaloosa came together and then two percent went
14 for proposals for that, everyone could move forward. Wasn't it
15 the case at that time, when those discussions occurred, that
16 the committees were told that permitting Cerberus and Appaloosa
17 to come together this way, early on to formulate a proposal,
18 would provide an environment where there could be some market
19 testing and competitive bidding for this company? Not an
20 option. Isn't that the case?

21 A. Well, it -- even though the board is recommending that we
22 proceed with this transaction, the board is also fully aware of
23 its fiduciary duty to consider now or in the future proposals
24 that might come along that would further enhance the
25 stakeholder value. If such an offer comes along it will not

1 have the hurdle of overcoming the expenses that will have been
2 paid from the estate to these plan investors. That is a risk
3 we bore in mind. So we do not believe we have foreclosed the
4 possibility of yet another investor showing up with a superior
5 proposal.

6 A. Right. And indeed, the question was designed because at
7 the time these discussions were had, the premise was a
8 structure will come out of this if you recall it that way, that
9 then can be used to market tests, and if someone has something
10 they will come out and the company will consider it, correct?

11 A. And so far we have not seen such a thing.

12 Q. Now, to the extent that that is the hope that this will
13 close if it's the only thing on the table, or if there's
14 something better it will emerge, wouldn't it be helpful if the
15 investment agreement had a process so that interested investors
16 might know how to provide a meaningful proposal to the company?

17 A. I don't understand the question.

18 Q. Well, usually in other contexts, breakup bids are provided
19 because someone is serving a stalking horse assumption, and
20 you've had experience with that, haven't you?

21 A. Yes.

22 Q. And generally, while one doesn't need to have an open
23 auction contest, to the extent that procedures for identifying
24 a qualified bidder helped a company to engage in discussions,
25 correct?

1 MR. BUTLER: Objection. Again, this is cumulative of
2 both Mr. Sheehan's testimony and Mr. Resnick's testimony on
3 this point.

4 THE COURT: Did the board consider the pros and cons
5 of having formal bidding procedures, such as a date by which
6 all bids should be received and how one qualifies to move to
7 the next step of the process?

8 THE WITNESS: Yes, Your Honor. We considered and
9 discussed whether we should have an open auction process. We
10 discussed whether the agreement with AHC should contemplate
11 opening the door to shopping around with others. We had lots
12 of discussions about that. We ended up with the agreement we
13 did. The considerations that went into this are the following:
14 one is that most of the restructuring value being created here
15 is because we have been working our way through agreements with
16 our unions that provide us to get lower labor costs than we had
17 in the past, this is a labor transformation case first and
18 foremost. Secondly, there is considerable value being created
19 by the fact that the contributions by General Motors far exceed
20 the claims that they are taking back in this framework
21 agreement. And yet having set that, we are not done in any way
22 with the agreements with the unions nor with our agreements
23 with General Motors. That is work yet to be done. We have had
24 the handicap that without knowing who the plan investors are,
25 who the ultimate owners are, what the governing structure is

1 going forward, both the unions in particular and also General
2 Motors have been reluctant to proceed. We are up against a
3 time constraint -- a very important time constraint, in our
4 minds, that if we get bogged down we may see significant value
5 destruction in this company. And the two big concerns are as
6 follows: one is a very particular calendar concern -- is the
7 fact that in the third quarter of 2007, this year, there will
8 be labor negotiations at Ford, GM and Chrysler. And if we do
9 not get our labor deals done before midyear, we could end up in
10 what I call the maelstrom of that turmoil, which is shaping up
11 to be, perhaps, a very difficult labor negotiation and the
12 outcome for Delphi may be significantly worse than it would be
13 if we can do a separate labor agreement in this time frame.
14 The second big consideration is that the performance of this
15 company in 2006, and in particular its ability to attract new
16 businesses, because we have continued to demonstrate and
17 convince to our customers and about two-thirds of our new
18 business comes from customers other than General Motors, they
19 are -- they so far seem to have reasonable confidence that this
20 management group will be able to pull through this enormous
21 restructuring effort on a timely basis without the chaos of
22 labor destructions down the road. As we would begin to slip
23 our timetable, that confidence may erode, the access to new
24 business may stop and you may see a melting ice cube here where
25 there was significant value destruction. So those

1 considerations, you know, are weighed against having a full-
2 blown, lengthy auction process. We did talk to Cerberus; we
3 talked to Ripplewood, both of whom had been involved with the
4 company even prior to our filing. Appaloosa bought heavily
5 into various levels of securities here shortly after filing,
6 and therefore they became a major player. We started talking
7 with them actively last May. I went to their offices to talk
8 to them. We came to a conclusion in the fall that no one
9 bidder had all the keys to unlock this puzzle and that we
10 needed there to be some partnering. We therefore encouraged
11 partnering. We weren't quite sure, you know, which partnering
12 might be involved, but we did not think that Appaloosa on their
13 own could conclude this deal, nor either of the others. There
14 were other people who approached us and wanted to come in to
15 due diligence and kick the tires. We had seen with the three
16 bidders that we had there was a significant commonality of
17 estimates of total enterprise value, which meant that the game
18 was largely confined to carving up the equity portion of the
19 company. The Cerberus and Appaloosa team made a strong
20 proposal, may not be the one we'd all wished for, but it was
21 much stronger than with what Ripplewood brought and we made the
22 decisions we did. On December the 11th and the 18th, we had a
23 Cerbalooosa proposal, Ripplewood had faded and we decided that
24 with all the time constraints we had that it was time to, you
25 know, close the doors. We needed to provide certainty to the

1 unions and General Motors that these are the people who are
2 going to be in a position in a governance structure of this
3 company. They're the people that you would be dealing with on
4 a go forward basis, and let's now close the door and finish off
5 our very important transactions with the unions and with GM.
6 It was a huge balancing judgment. Yes, there are expenses we
7 wish weren't there. Yes, there's other tweaks we wish we could
8 have done to the deal. But, you know, we had to vote on the
9 one that was in front of us, and we voted.

10 Q. So is it your view that based on that situation that it's
11 too late?

12 A. To the contrary.

13 Q. Okay. And if it's not too late, wouldn't whatever time
14 window the company has be best used if there is some limited
15 discrete non-open auction process for people to come in and do
16 due diligence in some sort of accelerated way, people who are
17 screened to your satisfaction so that to the extent that
18 there's other value here to be offered, there's a process and
19 there is an uncertainty and sort of one arm as this window,
20 which is limited, no dispute, begins to close.

21 A. We debated that point at length. Our board meeting this
22 week lasted from 6 o'clock on Tuesday evening until midday on
23 Wednesday. Almost all of that time was devoted to considerable
24 discussion and debate as to the alternatives that we faced.
25 One was whether to proceed with the transaction and this

1 hearing today versus a delay. The second big decision was what
2 to communicate to Highland, which is a bidder that surfaced on
3 December the 21st, as you're well aware of. I'm sitting here
4 staring at a chart that says, you know, 500 million dollars.

5 Q. I'll take it back.

6 A. Excuse me?

7 Q. I'll take it back.

8 A. No. My point is should a Highland proposal develop into
9 something that we regard as attractive and superior, or some
10 other bidder shows up with something that is superior, we would
11 consider. That is not only our instinct, it is our fiduciary
12 duty. And the amount we will have expended will be not 500
13 million, it will be a fraction of that which would represent
14 whatever expenses and breakup fee would have been alternative
15 transaction that would be incurred at that point. Weighing all
16 the pros and cons of delays and the implications of delays
17 versus the risk of an expenditure that might turn out to not
18 bear fruit, we concluded that the expense risk and given
19 everything at stake here was worth the risk. So we decided to
20 proceed.

21 Q. Okay. But wouldn't that risk and wouldn't the time window
22 that the company has left be best used if there was a discrete
23 process and a discrete period during which that process
24 occurred that permitted a selective, screened, controlled group
25 of those who could establish sufficient bona fides to meet your

1 standings to do what they needed to do. They would come in and
2 go out and for you to know thereafter that when the window
3 closed there wasn't going to be other destructions in the
4 process. Doesn't that have a benefit?

5 A. I -- well, I'm not an expert, but I cannot myself imagine
6 a timetable that would permit the kind of open auction that you
7 have suggested, or semi-open auction that you have suggested,
8 and yet which gives us reasonable assurance we can conclude our
9 General Motors and union deals prior to slipping into this
10 September '07 timetable that has us very concerned. That's one
11 point. And secondly, whether we like it or not -- whether we
12 believe they would enforce it, the fact is that the AHC offer
13 is contingent upon, you know, the approval that requires us to
14 have this hearing today. If we don't, maybe they might stick
15 around; maybe they might not. But we would rather have them in
16 hand working with us as a rock to stand on even though we have
17 been quite explicit that if other offers come along we will
18 seriously consider them as well.

19 Q. Sir, I'm not asking the question as if it's an either/or.
20 What I'm asking is to the extent that the company can proceed,
21 and proceed on all fronts, and have -- and use the limited
22 window in an organized way, wouldn't that -- and you do have
23 investment bankers who could design a process that doesn't
24 create the fears of an open and, you know, a sort of random
25 situation that you have concern about, since the time is

1 limited both with respect to someone's ability to come in and
2 someone's ability to satisfy you as to bringing the transaction
3 along to protect the estate. If there's a window at all, isn't
4 there a way to structure what's here now, given the substantial
5 incentives. I don't know many people who walk away from,
6 arguably not, and I know that it could be different, and I know
7 it could be lower, but if he thinks at this point, you know,
8 that it's a good investment, could something be structured so
9 that the company can have the best of both worlds?

10 A. I don't know. What we were asked to vote on December the
11 11th, and what we tabled on December the 18th, was a heavily
12 negotiated deal. And we came to a conclusion that it was
13 better to proceed with that, nail it down, have that as the
14 rock to stand on rather than taking our risks elsewhere. And
15 we reaffirmed that in the meeting we had on January the 10th.
16 There is, of course, a competing proposal that was submitted,
17 it had a lot of merit. It would be very attractive on its
18 economic concerns. What we don't know is whether it was
19 executable and we do not know what dynamic it would unleash in
20 our labor negotiations or in negotiations in General Motors.
21 So you cannot just make the bald assumption that the deal is
22 baked, and this is just a refiguring of the equity, you have to
23 consider is it executable and will it change the amount of
24 value that might be racked up among the equity participants.

25 Q. Right. The question was not a concern for Highland, sir.

1 A. Yes.

2 Q. The question was just concern for putting the company in a
3 position where Highland or others who were, from your point of
4 view, worth listening to, had a small window for that to
5 happen. If that were possible, wouldn't that be something that
6 you would embrace?

7 MR. BUTLER: Objection. Asked and answered. He
8 testified that he didn't know.

9 THE COURT: I think --

10 Q. If it were possible, would you embrace it?

11 THE COURT: Now you're speculating, right? I think
12 we've been over this.

13 Q. Okay. Thank you. Thank you for your time.

14 A. Thank you.

15 MS. STEINGART: I'm finished, Your Honor.

16 THE COURT: Okay.

17 MR. PARKINS: Your Honor, at this point we have no
18 questions for Mr. Miller.

19 THE COURT: Okay.

20 REDIRECT EXAMINATION BY

21 MR. BUTLER:

22 Q. Mr. Miller, because we agreed in the court while you were
23 sequestered not to talk to you -- with you, I didn't talk with
24 you. And so you don't know that now what I'm going to do is
25 just ask you some questions about what Ms. Steingart asked you.

1 I'm going to also ask you some questions about the board
2 meeting over the last couple of days.

3 A. Very good.

4 Q. In order to complete the evidentiary record. I'll try to
5 make those questions pretty quick. I'd ask if you could look
6 at a series of documents and we'll give you some help with
7 those documents. Exhibit 114 through 118.

8 A. Tab 114 is missing from this book.

9 Q. That's why -- I understand. He's going to help you.
10 There's two different books we need you to look at. 114 is in
11 one book, 115 through 117 is in another book, and then 118 is
12 in the back of another book.

13 A. Thank you.

14 Q. And I'm just going to ask you very quickly if you recall
15 was the document at Tab 114, the January 9th letter from
16 Highland, was that distributed to and discussed at your board
17 meeting over the last two days?

18 A. Yes.

19 Q. With respect to Tab 115, was this document, Exhibit 115,
20 was this document distributed and reviewed at your board
21 meeting over the last several days?

22 A. Yes.

23 Q. Same question for Tab 116?

24 A. Yes.

25 Q. Looking at Tab 117, there's a board book here, it's quite

1 thick. I just ask you to turn to the second page; it has a
2 document number 2339 on it in the lower, right-hand corner, and
3 is an index of materials. And I'd ask you whether the index of
4 materials that are listed there were, in fact, reviewed by the
5 board over the last several days at its meeting?

6 A. Yes. And in my recollection not only was this distributed
7 and discussed, specifically over dinner, each of the topics
8 here was briefly summarized by you to all of the board members
9 so they could reflect on it overnight and have access to
10 reading those materials. They were available to them during
11 the meeting as the relevance of each came up. So this was a
12 very comprehensive package and was thoroughly discussed.

13 Q. And then -- I'm going to come back to this document in a
14 minute but I'd like you to look at Tab 118. I'll ask you if
15 that document also was distributed and discussed at the board
16 meeting of the last couple of days.

17 A. Yes.

18 Q. Okay. Let's go back to Tab 117 in that summary. Without
19 going into each of the individual documents I have a couple of
20 questions about the materials. First, are you aware -- and it
21 was included in Tab 15, are you aware that Skadden sent a
22 letter to the plan investors on January 4th asking them to
23 consider providing input to the company, to the board, about
24 the Highland offer and about making competitive changes to
25 their agreement in response to the Highland offer?

1 A. Yes. You and I discussed that letter at length and its
2 significance in our efforts to further improve the offer.

3 Q. And was that letter sent by Skadden at your direction?

4 A. Yes, sir.

5 Q. Did the plan investors provide a written response to the
6 board?

7 A. I do not recall.

8 Q. Are you aware of what their response was?

9 A. Their response was they were not prepared to make changes
10 to their offer.

11 Q. Also, at Tab 27 there was a note here that there would be
12 a letter from the creditors' committee provided separately to
13 the board when it was received. In fact, you don't have any
14 recollection that letter was received during the board meeting,
15 do you?

16 A. I don't believe it was during the board.

17 Q. Did you receive a letter subsequently?

18 A. I don't recall. I believe so.

19 Q. I also would like to turn your attention to -- I think you
20 may recall but you can turn to the document if you want to.
21 Within item 18, in Tab 117 there was a letter from Houlihan
22 Lokey, on behalf of the equity committee, dated January 7,
23 2007, do you recall that letter?

24 A. Yes, I do.

25 Q. Did you read it?

1 A. Absolutely.

2 Q. Did you talk to your directors about all of them reading
3 it?

4 A. Yes. That's one particular document I wanted every
5 director to focus on and to read prior to concluding our
6 discussions to make sure they fully understood an opposing
7 view, if you will, of challenging some of the assertions made
8 by Rothschild. As chairman of this board, I wanted our
9 directors not only to know what we were telling them, but to
10 know the views were coming from the other side so that they
11 could, in fairness, deliberate and come to a conclusion.

12 Q. At the board of directors meeting, was the Houlihan Lokey
13 letter, in particular, was that reviewed on a line item by line
14 item by the board during the course of the board meeting?

15 A. Yes. There was an analysis prepared that both listed the
16 particular allegations or assertions made by Houlihan and then
17 commentary from us. But at least the board would see side by
18 side the assertion and the response and then be able to come to
19 their own conclusions about it.

20 Q. And would it be fair to say that the board thought that
21 certain of the paragraphs in the Houlihan Lokey letter, in
22 fact, raised issues that were meritorious?

23 A. Yes.

24 Q. And there are other paragraphs that the board placed less
25 merit to, is that correct?

1 A. Yes. In summary terms, as we have discussed, there was
2 the tension between the surface economic and government
3 superiority the Highland offer weighed against the
4 executability and possible impact on other stakeholders still
5 in negotiation. And the delicate balance that we were
6 weighing, I think that it involved a fair and thorough
7 discussion of the points in debate.

8 Q. You said the board had to make -- you presented two
9 decisions for the board to make. The first was whether to
10 proceed with this hearing?

11 A. Yes.

12 Q. What was the second decision?

13 A. The second decision involved what to communicate to
14 Highland, a potential source of a yet more attractive deal for
15 our stakeholders. We debated whether we would be better off to
16 slam the door and say this is it, we're not going to consider
17 anything else, or whether it was the better -- even though the
18 alternative would be -- even though there was some risk of
19 destabilizing our negotiations with unions and GM whether we
20 should leave the door open. As you know, within minutes after
21 the conclusion of our board meeting I called a principal of
22 Highland to both explain what our decision had been to give
23 some indication of what might constitute a successful proposal
24 but did say we were committing to this, we were bound to the
25 fee commitments if it's approved by the Court. But at the same

1 time, in furtherance of our duty to all of our stakeholders,
2 proposals which could be deemed superior would be considered.
3 We would not slam the door on access to confidential
4 information under terms comparable to other bidders. And it
5 was the board's desire that we make sure that no stone's left
6 unturned in trying to find best value for our stakeholders.

7 Q. Who do you speak to at Highland?

8 A. Patrick Daugherty.

9 Q. And I don't want you to say on the record -- describe in
10 particular on this public record what you told him, but did you
11 provide him specific guidance about the issues the board wanted
12 Highland to address?

13 A. Yes.

14 Q. Ms. Steingart asked you a series of questions about
15 whether we should publish a list of bid procedures or a set of
16 procedures for some process here; do you recall that question
17 and your answers?

18 A. I recall the question, I don't recall my answers.

19 Q. Do you have a view of what might occur with the General
20 Motors and labor negotiations if, as part of this process, the
21 debtors were to publish bid procedures to seek in other
22 investors as an alternative to the plan investors?

23 A. Yes. If we were to publish bid procedures and say that
24 this was a wide open process where we were going to invite
25 competing bids and so on in a very open, you know, semi/quasi

1 auction way, first place, it is our judgment that it would have
2 a chilling effect on our labor negotiations. The labor unions
3 want to know who they're dealing with. And on December the
4 18th we were able to provide them with some certainty that we
5 had selected the plan investors. On December the 21st we saw a
6 pulling back by the unions. So we are once again at risk of
7 significant delay in getting to the labor transformation that
8 we so badly need if we're going to restructure this company.
9 Proceeding with this action and making the AHC group -- we
10 prefer everyone understands that we have a fiduciary duty to
11 consider alternative proposals. But at least we can get
12 started down this path and we are hopeful of being able to make
13 progress in our labor negotiations if we get the Court's
14 approval for the motion that we're considering to take. With
15 respect to General Motors, General Motors made a very public
16 statement. It went to the notion that if indeed there is more
17 value that can flow to equity, General Motors wants it. And so
18 there's a big question here as to whether we're looking at a
19 baked deal and simply dividing up the equity implications of it
20 or whether, in fact, the underlying deals that create the
21 equity value are in question if there are different plan
22 investors. And so that is a complicating factor that says this
23 is not a plain vanilla, you know, possibility for just an
24 ordinary auction, this is an incredibly -- I mean, I've never
25 seen a more complex restructuring than this one where all the

1 parts are moving in at the same time. And we needed to
2 bring -- you know, pin down some of the elements of our
3 restructuring plan. Not in the way that forecloses a superior
4 offer but at least in a way that we can get started finishing
5 off the rest of the pieces. Those are things that we brought
6 to bear in the judgments that we made on Wednesday.

7 Q. Thank you, Mr. Miller.

8 MR. BUTLER: I have no further questions.

9 MS. STEINGART: I have no re-cross, Your Honor.

10 THE COURT: Okay.

11 MR. PARKINS: None from us, Your Honor.

12 THE COURT: All right. You can step down, sir.

13 THE WITNESS: Thank you.

14 THE COURT: I'm just checking on some resources for a
15 second.

16 MR. BUTLER: Can Mr. Miller be excused?

17 THE COURT: Yes. All right. I think that leaves
18 just Mr. Daugherty, correct?

19 MR. BUTLER: Yes, Your Honor.

20 THE COURT: Okay.

21 MR. PARKINS: At this point, Your Honor, we'd like to
22 move what's presubmitted as Exhibit 122, the declaration of
23 Patrick H. Daugherty. Now, I don't know if it's in your
24 exhibit binder.

25 THE COURT: I don't know if its in the binder, I read

1 it. I have it.

2 MR. PARKINS: You have it?

3 THE COURT: Yes.

4 MR. PARKINS: Okay.

5 THE COURT: But that will be number 122?

6 MR. PARKINS: Yes.

7 THE COURT: And I'm assuming the debtors want to
8 cross-examine Mr. Daugherty?

9 MR. HOGAN: That's correct, Your Honor. Your Honor,
10 Al Hogan from Skadden Arps for the debtors.

11 THE COURT: Okay. If you can sit down, Mr. Daugherty
12 and raise your right hand, please?

13 (Witness is sworn)

14 THE COURT: For the record, would you spell your
15 name?

16 THE WITNESS: Patrick H. Daugherty, D-A-U-G-H-E-R-T-
17 Y.

18 CROSS-EXAMINATION BY

19 MR. HOGAN:

20 Q. Good afternoon, Mr. Daugherty.

21 A. Same to you.

22 Q. You're aware or not, sir, whether it's Highland or the
23 current plan investors or some other group of plan investors
24 that working with the debtor's unions will be important in
25 terms of the debtor's executing the ultimate restructuring

1 plan, are you aware of them?

2 A. Yes.

3 Q. You would concede, sir, that Highland itself does not work
4 directly with the labor unions in its portfolio companies, is
5 that correct?

6 A. That's correct.

7 Q. While we're on the topic of the labor unions, I want to
8 clear up just one other thing that I'm sure is an inadvertent
9 mistake, but I think it's important. Do you have your
10 declaration in front of you?

11 A. Do I?

12 MR. PARKINS: Yes.

13 A. Okay. Thanks.

14 Q. Could you please take a look at paragraph 11 of your
15 declaration?

16 A. Okay.

17 Q. That first sentence is false, is it not?

18 A. You're talking about as of today -- as of now?

19 Q. As of the time that you signed your declaration?

20 A. Oh, that's correct. I guess. I mean, it depends on when
21 the creditors got on board.

22 Q. In particular, Mr. Daugherty, I'm focusing on the language
23 where you are speaking about the people that have objected to
24 the motion.

25 A. Yes.

1 Q. You say that all the debtor's unions object to the motion,
2 do you see that?

3 A. Yes, I do.

4 Q. Are you aware that the United Auto Workers did not object,
5 even initially, to this motion?

6 A. Thanks for the clarification, I thought they had. But I
7 understand that as of this morning they weren't.

8 Q. Actually, as of any time?

9 A. I accept that, I accept that.

10 Q. Are you aware that the United Steel Workers never objected
11 to this motion?

12 A. I accept that as well.

13 Q. Do you know that those are two of the three largest unions
14 of the debtors?

15 A. Yes, I do know that.

16 Q. And it sounds like you are aware that as we sit here right
17 now, no unions are objecting to this motion, correct?

18 A. That is correct.

19 Q. And so are you aware that as we sit here right now, no
20 creditor of the estate is objecting to this motion, correct?

21 A. I think that's the case.

22 Q. Mr. Daugherty, how much stock of Delphi did Highland own
23 prior to October 8, 2005?

24 A. I don't know off the top of my head.

25 Q. Do you have any estimate for us?

1 A. No.

2 Q. Well, how many shares has Highland accumulated in the
3 sixty days prior to December 18, 2006?

4 A. All I can tell you is we have about 8.8 percent of the
5 shares outstanding.

6 Q. And can you tell us how much of that you've accumulated in
7 the last sixty days, since December 18, 2006?

8 A. No. I don't have that detail in front of me. Frankly, I
9 just hadn't paid attention to it.

10 Q. Do you know what Highland's average basis price is in
11 Delphi's stock?

12 A. No, I don't.

13 Q. Do you have any idea whether or not Highland's basis is
14 higher or lower than the current plan investors?

15 A. Than the current plan investors, I have no idea what their
16 basis is either.

17 Q. Does Highland currently stand to lose money based on its
18 speculative purchases of Delphi stock?

19 A. I don't know what you mean by speculative purchases of
20 Delphi stock.

21 Q. As you sit here today, does Highland stand to lose money
22 on its existing purchases of Delphi stock?

23 A. Yeah. Beyond that. We stand to lose money on our stock,
24 our bonds, and our bank debt.

25 Q. And can you tell us how much you stand to lose?

1 A. The value of our total investment is about 700 million.

2 Q. Now, looking at your declaration, in paragraph 14, what
3 you're talking about there, you say that the Appaloosa
4 Cerberus's proposal takes the value current stockholders are
5 entitled to receive. Can I just stop you right there? Isn't
6 it true that you acknowledged to the debtors, at a meeting in
7 Troy, Michigan, that these debtors were insolvent, absent a
8 consensual resolution, a consensual deal with GM and the labor
9 unions?

10 A. You know, I didn't get into the solvency. I remember the
11 questions. And as Jack will recall, I didn't want to make a
12 declaration as to whether the company was solvent or not. One
13 thing I did know was that the company was going to have a hard
14 time going forward without those constituencies on board. And
15 that was the message I intended to convey. I agree with that.

16 Q. Okay. So focusing on that language in paragraph 14 that
17 we just looked at, you would concede that the value you're
18 talking about, that value doesn't exist for current
19 stockholders absent a consensual deal with GM and the labor
20 unions, is that right?

21 A. I don't think the value exists for anybody absent a deal,
22 a consensual deal with GM and the labor unions.

23 Q. Very good. So focusing a little bit more on the idea of
24 value transfer, there's been a lot of discussion today about
25 what the price of Delphi stock might or might not be in the

1 future. What you've done in your declaration here is to take
2 the current market price and come up with an implied value for
3 Delphi stock emergence and compare that to the strike price for
4 the equity interest in the framework agreements.

5 A. It's based on current market trading. Actually, I think
6 the number you're referring to is the number as of December
7 19th. But, yeah.

8 Q. And on that basis, in your declaration you contend that on
9 beyond the transfer value that we've talked about here today
10 that the plan investors are going to receive north of a billion
11 dollars of value based on the spread between the strike price
12 and your implied equity price, correct?

13 A. Not only that, but fees and, I think, the 6.3 million of
14 shares that was a holdback on the rights backstop. I mean, all
15 those things have been spoken about at length. But in totality
16 it was -- I understand the floor is 500 million, but we think
17 it's closer to a billion.

18 Q. And that spread between the 500 million and billion is
19 based on the difference between the forty-five dollars that's
20 assumed in the framework agreements and your implied equity
21 value, correct?

22 A. Well, it's not really my implied equity value, it's a
23 function of where the market's value and shares and what the
24 conversion is going to be at the end of the day with
25 confirmation, based on the deal they proposed.

1 Q. Let's talk about that. The way the markets are currently
2 valued in the shares?

3 A. As of the 19th. Obviously, if you add now, since our deal
4 stock's gone up a lot. But it would be unfair to attribute
5 that amount of value at the time of their plan because the
6 markets basically spoke about our deals, said it was a better
7 deal for equity. So you wouldn't want to include that. What
8 we waited is two days after their deal was announced so the
9 market could absorb the effect on equity as it related to their
10 deal.

11 Q. The so-called transfer of value that you're worried about
12 is based on a calculation of equity value based on current
13 market price for Delphi stock, right?

14 A. Right. It was a combination of current -- again, let's
15 use the date December 19th. And adding to that the new cash
16 coming in via the rights offering. Obviously, we assume a
17 dollar is worth a dollar. So on that basis, you add the two
18 together and that implies the value. But it's not theoretical,
19 it's not conceptual. As I told you yesterday, it's an is.

20 Q. It's an is. Your belief is that makes sense because the
21 market sets the price, right?

22 A. The market basically valued the shares on that particular
23 day, yes.

24 Q. The problem, Mr. Daugherty, was that the market may not
25 have perfect information right now about Delphi, isn't that

1 right?

2 A. I'm not sure anybody has perfect information about Delphi
3 right now. When you look at how subject we are to agreements
4 with GM and the unions and our prospects for being able to bid
5 on future programs with GM, I think it's fair to say there's a
6 lot of ambiguity for everyone.

7 Q. I mean, it's certainly fair to say that Highland would not
8 commit to a 4.7 billion dollar investment today just based on
9 publicly available information, would you?

10 A. No. I think what you see is we're basing our commitment
11 on publicly available data and then we're trying to kind of
12 read between the lines, so to speak, as far as -- currently the
13 plan as proposed has a 2.4 billion dollar minimum. So we can
14 make the assumption that 2.4 has to be hit. Otherwise the deal
15 that's been proposed blows up. So we can use that as a
16 starting point and then we could build around it. And, in
17 fact, that's exactly what we did.

18 Q. That's writing a letter. But what I'm talking about is
19 actually making an investment. You wouldn't think about doing
20 that based solely on publicly available information, correct?

21 A. If I understand your question, in order to basically
22 evaluate what we would be willing to do, we did just what I
23 just mentioned now as it relates to going through funding,
24 closing on the deal, certainly where you're subject to due
25 diligence. And it was important to us not to basically upset

1 the apple cart as it previously existed. So what we agreed to
2 do in our proposal was step into the shoes, step into the same
3 amounts, step into the same due diligence as the people before
4 us.

5 Q. And focusing on that due diligence, specifically subject
6 to due diligence and access to non-public information, right?

7 A. Oh, sure, sure.

8 Q. Information that the market doesn't currently have,
9 correct?

10 A. That's correct.

11 Q. And that's because in your view the non-public information
12 is going to be the essence and the core of determining the
13 value of Delphi, right?

14 A. Yeah. But it's going to be a series of non-public
15 information. It's going to be the data room that was referred
16 to earlier. And then it's also going to be ultimately how
17 these negotiations go with GM, how these negotiations go with
18 the unions. And on top of that, what kind of program
19 assurances we're going to get going down the road. And,
20 frankly, that's the big question we're all waiting for.

21 Q. And to evaluate all that non-public information, you've
22 got a team of people ready to go in and look at that, right?

23 A. Absolutely.

24 Q. The public shareholders on which you're basing your
25 spread, they don't have any of that, do they?

1 A. If they have it, they don't have access to the company.

2 Q. That's exactly right. Taking a look at paragraph 24 of
3 your declaration if you could, please. Going to the last
4 sentence of that paragraph. It says Highland Capital has also
5 provided the debtors with its draft plan framework and support
6 agreement. And equity purchase and commitment agreement black
7 lined to those of Appaloosa Cerberus Group, you see that?

8 A. I do.

9 Q. You did that on January 9, 2007, correct?

10 A. Yeah, we did.

11 Q. That was nineteen days after you delivered your proposal?

12 A. That's correct.

13 Q. Now, you would concede that it's correct that the markups
14 that you delivered on January 9th changed other terms and
15 conditions beyond what was stated in your proposal of December
16 22nd, correct?

17 A. Why don't you refresh my memory? Because on a material
18 basis, I don't think that's the case.

19 Q. So I think I can wrap it up this simply. As you sit here
20 today, you can't tell me one way or the other whether you've
21 amended your proposal through the markup which you submitted?

22 A. No. I'm not saying that. What you asked was did we
23 deliver a plan framework and support agreement on the 9th. In
24 fact, we did. What it basically does is it leaves in place, as
25 we said in our letters that we said all along, it leaves in

1 place the treatment of the GM framework. It leaves in place
2 whatever's been done on the union side, which from my analysis
3 it doesn't seem like there's much. Okay. And then it leaves
4 in place the treatment of the exit financing. It leaves in
5 place the treatment -- it leaves in place the treatment of the
6 GM stipulations, the pension obligations. All those items we
7 left in place. The only thing we basically changed was instead
8 of the 1.2 billion dollar convertible preferred that was
9 strictly offered to the Cerbalooosa group, we simply took that
10 value and we moved it back down to the shareholders. All
11 right. And included that in the rights offering. We also took
12 the twenty percent that was going to be funded via equity
13 ownership, you know, of the bonds. The bonds were going to
14 take twenty percent in equity. We took that and said bonds are
15 entitled to par plus crude so long as the shareholders can come
16 up with the money to pay them out. So we took that and moved
17 it down. And then, obviously, we changed the corporate
18 governance. And made it, from our perspective, more fair.
19 More reflective of an independent public company that didn't
20 necessarily or definitely didn't have Highland in control of
21 frankly anybody else. Those were the key -- those were the
22 material changes that were made.

23 Q. Could I direct you to Exhibit 115 in the books, please.
24 Mr. Daugherty, in terms of the differences -- and I won't ask
25 you to accept this characterization, I'll ask you to comment on

1 it in a second, but this document purports to list the
2 differences between your black line and the AHC agreements.
3 Did these look consistent with what you understood Highland was
4 changing in its black lines that it submitted to the company on
5 January 9th?

6 MR. PARKINS: Objection. Lack of foundation for that
7 question.

8 THE COURT: Sustained. I don't think he could answer
9 it.

10 Q. Let me ask you one final question. Can you tell me,
11 sitting here today, one way or the other, whether the black
12 line that you submitted to the company on January 9th changed
13 anything from your proposal of December 21st?

14 A. Not materially, it shouldn't have.

15 Q. Okay.

16 MR. HOGAN: No further questions, Judge.

17 THE COURT: Okay. Any redirect?

18 MR. PARKINS: Your Honor, I have a very brief
19 redirect.

20 THE COURT: All right. Before you do that. I had a
21 couple of questions and I should probably ask them before you
22 do that. Mr. Daugherty, paragraph 7 of your declaration says
23 "although Highland Capital had been aware that the debtors were
24 discussing reorganization strategies and scenarios with
25 potential investors, Highland Capital was not aware of the

1 terms or structure of any proposed transaction." You see that
2 there?

3 THE WITNESS: I do.

4 THE COURT: When, if you can recall, did Highland
5 Capital become aware that the debtors were talking about
6 scenarios with potential investors?

7 THE WITNESS: I think it was about six weeks prior to
8 December 18th, we were starting to hear rumors in the market.
9 Sources like Debtwire basically talking about contemplated
10 structures. It turned out the one that we heard about wasn't
11 the one that ultimately came to be. But as I went in and
12 talked to Jim Dondare I basically said, you know, I feels the
13 sand moving under my feet, something's going on, you need to
14 give David Tepper at Appaloosa a call because there's too much
15 out there. You need to basically raise your hand and tell him
16 that we're here, what our size is, willing to be proactive,
17 willing to be included. But that was probably the first time.

18 THE COURT: And then as I read your proposal it
19 doesn't, by any means, guarantee your company voting control of
20 the debtors, that's correct, right?

21 THE WITNESS: That was by design.

22 THE COURT: Well, that's my next question. Why do
23 you not want to have that level of control?

24 THE WITNESS: That's a great question. We basically
25 sprung into action on this thing December 18th. We literally

1 did. And when people talk about being able to move, we
2 created, structured and offered this deal in three days, and
3 that's the honest to God's truth. What we did was we looked at
4 it, what we thought we could live with, we looked at the GM
5 deal. And instead of getting into who owes what to whoever and
6 what our views might be on that, we needed to come in in a way
7 that could be, from our perspective, viewed as the least
8 offensive as possible and at the same time, defending not only
9 interests as shareholders, but the equity group in general.
10 And so we developed a plan that we felt like we could live
11 with. And I think that's an important point to note here
12 because this is not -- you know, it was suggested to me that
13 this is a topping bid and even other people have called it
14 that, isn't this really a battle between the hedge funds? It's
15 not. It's not a battle between Highland and Cerbalooosa. What
16 this is is a battle for fairness. And so we structured our
17 deal accordingly. And if you look at how we structured it, not
18 only do the corporate governance in the hand of basically the
19 equity as a whole, but we also reached out, and we thought we
20 reached out, sent a good message to GM and said look, we want
21 you to be part of that selection family. We thought we were
22 sending the right message to management. We said we want you
23 to have somebody on that selection panel. And then four people
24 will be representative of equity with, obviously, one from the
25 committee. We didn't note who goes where because again, we did

1 not want Highland to be a lightning rod. The other thing we
2 did was we said okay, as we structure this rights offering
3 let's make sure we offer to everybody. Because the last thing
4 we want to do -- who may think we got any credibility if we
5 just came in here and said no, pick me, and this is how I
6 should gobble up the fees. We think that was just more of the
7 same, which was what we were fighting in the first place. So
8 we came up with a framework where we offered the rights
9 backstop to basically all material holders. Really, we picked
10 the number really because of logistics reasons, but we picked
11 anybody that has a half percent or more would be willing to
12 come in and backstop it. And, of course, we got rid of the
13 convertible preferred that was only available to a select few.
14 We got rid of the 6.3 million dollar holdback that was only
15 available to the select few. We did keep the 2.5 percent fee
16 but we opened it up to basically all shareholders so they could
17 basically have a first opportunity in self helps. So you
18 actually have three phases. You had the shareholders getting
19 the rights offering, you had the material shareholders getting
20 the opportunity to backstop, and then Highland would ultimately
21 backstop that. We did not want to control this, we still do
22 not want to control this. We like the investment. When
23 management asked me why did you make this investment, we like
24 the management team. We don't agree with everything they do,
25 they had a lot of tough choices. I wouldn't say that I would

1 do -- make all those choices. But when you're in that
2 management seat, you know, that's the hot seat and we certainly
3 understand that we're not going to agree on everything. But we
4 like the austerity measures. We like the fact that this thing
5 could turn. And we thought that at the end of the day it's in
6 the mutual interest of GM, labor, Delphi and its investors to
7 get a deal done. And we liked that dynamic and we saw progress
8 being made strictly from a public perspective that encouraged
9 us to make the investment in the first place. And that's it.

10 THE COURT: Okay. You want to redirect?

11 MR. PARKINS: Very brief.

12 REDIRECT EXAMINATION BY

13 MR. PARKINS:

14 Q. Mr. Daugherty, you heard questions about due diligence
15 today, haven't you?

16 A. Yes.

17 Q. Has Highland started its due diligence process yet?

18 A. Yes.

19 Q. Has Highland executed a nondisclosure agreement with the
20 company yet?

21 A. No.

22 Q. Why hasn't Highland executed a nondisclosure agreement?

23 A. You know, there's interactions back and forth but the
24 bottom line is there were certain provisions in there that we
25 found that we couldn't live with considering the kind of

1 analysis discussions that we need to engage in in order to
2 properly and be real in this transaction. And what do I mean
3 by that -- I mean, I think we heard Mr. Resnick say earlier
4 that you had to have a dialogue with the unions. You had to
5 have a dialogue with GM if you're going to be able to be
6 successful in this. Well, some of the terms -- and then they
7 basically said no, you can't talk to those people unless we
8 approve. And then we had some interactions where no, you could
9 talk to them but you got invite us to the meeting, and us is
10 Delphi. And after the meeting, you got to tell us everything
11 you talked about. Well, it's very hard to have those critical
12 dialogues, building trusts, etcetera, when you basically have
13 to invite your mother with you everywhere you go. And so we
14 found that hard to contend with. The other issue that we found
15 problematic was that -- you know, these other players had a lot
16 of months to basically prepare. They were able to deal with
17 the borrower and then they were able to go out to their
18 syndicate group and develop, you know, a backup investment
19 team. We got to act quick. I mean, there's one thing we
20 definitely do buy into, because this thing's got to get
21 resolved by September. We're with that a hundred percent. The
22 problem is is that we got to act quicker. Now, we did tell the
23 company we'll get our due diligence done in sixty days. In
24 fact, I told them I'll push for six weeks. And so far I think
25 we've shown that we could deliver pretty quickly. I mean, in

1 less than a month we delivered a plan, we're sitting here
2 today. Nobody's arguing that our plan isn't fair, okay? And I
3 find that to be somewhat of a plus in our column. But the
4 reality is we'll continue to move quickly but we've got to be
5 able to run a parallel path of working with our fellow
6 financiers. I mean, we've had numerous calls from people in the
7 group raising their hands saying include me, include me,
8 include me. And so we need to be able to talk to those parties
9 without the company having a right of first refusal. Those
10 were the critical elements to the NDA that we really felt just
11 froze out the process. And truth be told, one of the other
12 bidders out there that did side on the NDA has mentioned to
13 third parties that they want to talk to us. But it's such a
14 tar baby that they feel like they can't even have a dialogue
15 with us without getting sued, and that was a problem. That's
16 why we couldn't get there. And, you know, in management's
17 defense we had these calls -- we had discussions through the
18 weekend. I mean, these guys do work hard, you can't fault them
19 for that. And management is reasonable, and we think we're
20 getting close, and the next thing you do is you get something
21 sprung off by the law firm that's totally different. And I'm
22 not going to point fingers at that because I don't think that's
23 management's direct. But, you know -- I guess I am pointing
24 fingers, sorry. Guilty. But anyway, that's it.

25 MR. PARKINS: No other questions, Your Honor.

1 THE COURT: Okay. Any cross? Okay. You can step
2 down, Mr. Daugherty.

3 THE WITNESS: Thanks.

4 THE COURT: Okay. It's 6 o'clock -- there's no other
5 evidence, right? The factual record is closed?

6 MR. PARKINS: Yes, Your Honor.

7 MS. STEINGART: We submitted the designations of Mr.
8 Opie, Your Honor. But other than that there is no other
9 evidence.

10 THE COURT: All right. As I understood, you were
11 prepared to agree to the designations of Mr. Opie, right?

12 MR. HOGAN: Yes. Judge, we have designations to both
13 their solutions.

14 THE COURT: Okay.

15 MR. STEINGART: And we have no -- we're good with
16 that.

17 THE COURT: All right.

18 MR. PARKINS: We're fine with that too, Your Honor.

19 THE COURT: Okay. Very well. So the factual record
20 is closed. It's 6 o'clock, and I appreciate there are time
21 constraints with the proposal on the table and I have a number
22 of questions I think could be developed in oral argument. I
23 won't be able to rule tonight. I'll have to rule tomorrow.
24 Many of you have the pleasure of coming back here tomorrow
25 anyway. But I leave it up to you whether you want to have oral

1 argument tonight or whether you want to gather your thoughts
2 and give me oral argument tomorrow.

3 MR. BUTLER: I'm prepared to do it, Your Honor.
4 Debtors are prepared to do whatever the Court wants.

5 THE COURT: I was going to leave it up to you.

6 MR. BUTLER: We're going to be back here in front of
7 you tomorrow as well. It's a matter of what the -- I don't
8 know how much time people think they intend to use for
9 argument.

10 THE COURT: Well, that's a good -- well, part of it
11 is I have some questions. So it's hard to predict. I actually
12 think it's probably better to have argument tomorrow. My best
13 estimate of the omnibus hearing is that it will be about two or
14 three hours, is that fair?

15 MR. BUTLER: Yeah. And then there's a claims hearing
16 after that, Your Honor.

17 THE COURT: And that's about two hours?

18 MR. BUTLER: I think that's probably right, Your
19 Honor.

20 THE COURT: Well, the omnibus hearing, the main
21 matter is the exclusivity issue and I assume that would follow
22 on this matter.

23 MR. BUTLER: The only objector left to exclusivity is
24 Highland.

25 THE COURT: Right. And so I don't think the omnibus

1 hearing would be two or three hours. I was counting the claim
2 objections in the omnibus hearing together, thinking it might
3 be three hours, is that --

4 MR. BUTLER: I think we can -- depending on what
5 happens with the exclusivity hearing. I think that hearing can
6 be done in two hours or less.

7 THE COURT: All right.

8 MR. BUTLER: We'll be as expeditious as we can. What
9 time do you want us to start tomorrow?

10 THE COURT: Well, I have to prepare for that claim
11 objections, unfortunately. So can you tell -- since you can
12 get a hold of them that we're going to start at 12 with the
13 omnibus and claim objections and we'll start at 9:30 for the
14 oral argument and then I'll give you a ruling.

15 MR. BUTLER: Yes, Your Honor. We'll send out a
16 notice tonight for the best we can do.

17 THE COURT: Okay. I mean, obviously, some people
18 will show up.

19 MR. BUTLER: A lot of the people are here who are
20 going to be here tomorrow. So we all know it.

21 THE COURT: The people with the claim objections knew
22 they were at the end anyway.

23 MR. BUTLER: Yes.

24 THE COURT: So they're at 1 anyway. All right. I
25 thank you for doing this efficiently and I'll see you all

1 tomorrow morning.

2 MR. BUTLER: Thank you, Your Honor.

3 (Whereupon these proceedings were concluded at 6:03

4 p.m.)

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C E R T I F I C A T I O N

I, court approved transcriber, certify that the foregoing is a
correct transcript from the official electronic sound recording
of the proceedings in the above-entitled matter.

Signature of Transcriber Date

Lisa Bar-Leib
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